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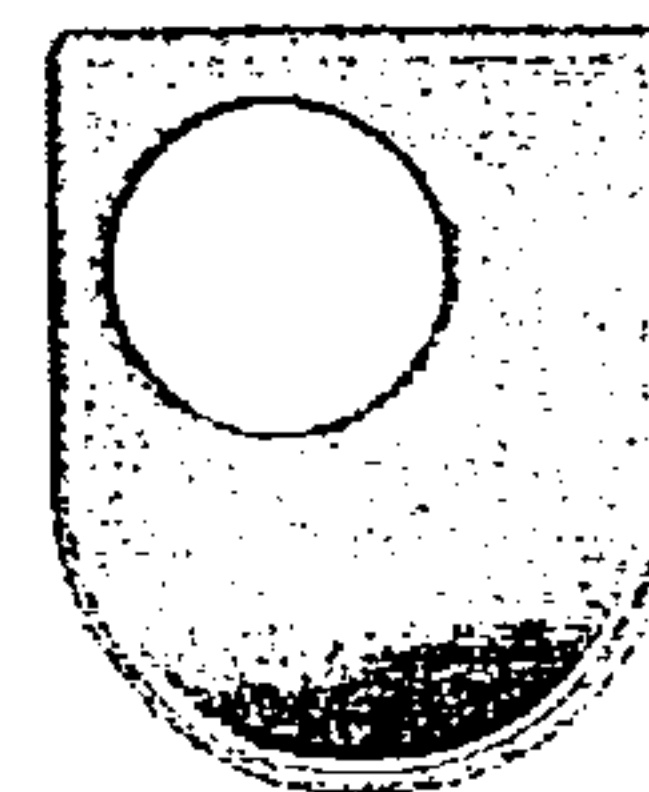
1

**International Law at Sea, Economic
Warfare, and Britain's Response to the
German U-boat Campaign during the
First World War**

A Thesis by Bruce Russell BEng (Hons) MA
Submitted for a Doctor of Philosophy Degree in
History with the Open University

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ABSTRACT

This thesis examines, in three parts, the British naval blockade of Germany during the First World War. In the first part, it analyses the development of international law in the years leading up to the war and uncovers British planning for a campaign of economic warfare against Germany. In the second part, there is an investigation into Germany's use of unrestricted U-boat warfare as a response to the British blockade of Germany. There is also a review of the effect of the wartime blockades on both Britain and Germany. The final part of the thesis studies issues of international law by separating the rules and regulations from the humanitarian aspects; it concludes by reviewing the changing role of the United States throughout the war and the state of law in the immediate post-war era.

Challenging existing literature, the conclusions of the research have been enhanced through the employment of both case studies and counterfactual history. The conclusions challenge Bobbitt's ideas on an epochal war and show that Britain adapted well to the rigours of the German U-boat campaign, although the changing role of the United States made a vital contribution to the war. This method of warfare both revolutionised the method of employment for submarines, but also doomed Germany to failure. The First World War at sea demonstrated that international law was unable to cope with the use of the U-boat.

This thesis makes an original contribution to the body of academic literature on the First World War by investigating new areas of research and improving academic understanding of the emergent role played by international law.

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INTRODUCTION

Property can be paid for;

the lives of peaceful and innocent people cannot be.

The present German submarine warfare against commerce is a

warfare against mankind.¹

This thesis investigates the complexities of international law, economic warfare and changing national strategies during the First World War. These topics have generated a huge scholarly literature in their own right and a selective historiographical review discusses them separately. What follows in this introduction is an outline of the arguments in this thesis, which reveals its structure and overall coherence.

This thesis is concerned with the impact on maritime war of a revolutionary weapons system, the submarine, which proved to be an able instrument of economic warfare. The use of the German U-boat in its emergent role as a commerce destroyer also put the framework of law regulating international conflict at sea under great stress. The international law of maritime war exists to define the way in which states,² particularly belligerent ones, interact; the rights and duties of neutral states embroiled in an international conflict; and the manner in which belligerent states treat the inhabitants of both belligerent and neutral states. In this thesis, the regulatory and the humanitarian aspects of international maritime law are considered. The regulatory refers to the rules and regulations for transportation of goods at sea during wartime and the conditions under which belligerent states could capture and seize goods belonging not only to other belligerents but also to neutrals. The humanitarian refers to the moral imperative embedded in international law to ensure the humane treatment of combatants and non-

¹ Woodrow Wilson, *Address to a Special Session of Congress on 2 April 1917* (Washington, 1917).

² Different states have developed their own concepts of sovereignty, two examples being the British monarchist state, where the monarch has traditionally governed its people, and the US concept of popular sovereignty where the people, for the people, govern the state.

combatants caught up in international conflict. From a humanitarian point of view, the treatment of all seafarers was important but in times of conflict, safeguarding the rights of non-combatants was of particular concern.

The investigation of Germany's use of the U-boat as a commerce destroyer is concerned with both the legality of commerce destruction itself and the treatment of the crews of the captured or destroyed ships. Encompassing both aspects of international law, the German U-boat campaign is central to this thesis.

Treaties and customary law have traditionally embodied the international legal obligations placed upon states. Controversy surrounded the customary law and the few treaties extant at the outbreak of the First World War. Many of the precedents cited during the war were set a century or more before. The political, social, economic and military changes that occurred since these precedents were set therefore raise questions regarding their applicability during the First World War.

The changing role of the US is also a key theme in this thesis. At the outbreak of war, the US was a major trading nation; it then developed into one of the most important neutral powers. It finally entered the war as an Associate Power of the western alliance when Congress declared war on Germany on 6 April 1917. By the time of the Armistice in 1918, the US Expeditionary Force was poised to play a key role on the western front. President Wilson set the terms of the Armistice and acted as a broker for the peace process that followed. The transformation of the US was one of many factors that influenced changes in the war strategies of Britain and Germany.

One of the key shifts in strategic thought was the move from the expectation of a short-war to the realisation that a lengthy, drawn-out war might be the only way to bring the opposition to its knees. Germany expected that the implementation of the Schlieffen Plan would knock France out of the war in a very short time. The Battle of the Marne and the War of the Frontiers slowed the German advance following subtle alteration of the original Schlieffen Plan. When asked in September 1915 to authorise the production of a

major class of U-boats that would not be ready until early 1917, Grand Admiral Alfred von Tirpitz³ rejected the proposal because 'the war would have been decided and ended by that juncture.'⁴ The Battles of the Somme and Jutland in 1916 finally dashed Germany's hopes for a short-war with the realisation that the only way to win the war was with a long-term strategy. The outcome of this change in strategy was the German U-boat campaign of unrestricted warfare, which evolved during the war but only realised its full potential in early 1917.

The overall aim of this three-part thesis is to make an original contribution to the study of the First World War. The first part is an investigation into international law. The first chapter contains a detailed examination of the Conferences and Declarations that shaped the legal environment of the First World War. In the second chapter, there is an investigation of British pre-war plans for a campaign of economic warfare against the German people (the 'hunger blockade') under the guise of the counterfactual Manchester War Crimes Tribunal. This counterfactual approach provides the opportunity to consider British plans from a different perspective.

The second part of this thesis looks at the conduct of the war itself and considers the different strategies adopted by Britain and Germany during the war and the changing expectation from a short-war to a long-war. Chapter three investigates the German U-boat campaign in detail during the first half of the war up until the summer of 1916 and shows how the role of neutral nations developed as the war against commerce matured. Chapter four picks up the chronology where chapter three ends, with a review of the strategic changes that were brewing in the first half of the war and how these changes were reflected in the use of U-boats by Germany. The responses by Britain and her Allies to this threat and the continued change in the US approach to the war are then examined. Having

³ Grand Admiral Alfred von Tirpitz (19 March 1849 - 6 March 1930). Secretary of State of the Imperial Naval Office.

⁴ From an interview with Admiral Spindler at Hamburg on 2 May 1963. Cited in Philip K Lundeberg, 'The German Naval Critique of the U-Boat Campaign, 1915-1918', *Military Affairs*, 27, no. 3 (Autumn 1963), pp.105-118.

therefore considered the outcome of what came to be a long war, chapter five reviews the economic reality through a series of case studies, each investigating the problems of managing a different resource during the war and the effect that blockade had on each.

The third part of the thesis concentrates on international maritime law by making a case study in chapter six in which international law and British domestic law (embodied in Orders in Council) were found to be at odds with each other in the case of the SS *Zamora*. Chapter seven considers the humanitarian aspects of the war by first investigating the legality and use of the submarine during the war, and then by looking at the Leipzig War Crimes Tribunal and its attempts to bring to account those who orchestrated and participated in the campaign of unrestricted U-boat warfare. Chapter eight concludes the third part of the thesis by looking at how international law was changed by the First World War, taking stock of various issues such as blockade, the freedom of the seas, and how the use of submarines emerged from the First World War into the new world order.

Survey of the Academic Literature

Introduction

The historiography of the First World War is so vast that it would be impossible for a single student to assimilate it all. This survey identifies the key areas of the academic literature used to support this thesis.

There have been several distinct stages in the development of the literature⁵ but they do not map directly to the structure of the thesis.⁶ The literature developed, in the first instance, from the sources emanating from the events immediately before, after and during the First World War (e.g. Government records), and the Official Histories and eyewitness accounts that were produced in its immediate aftermath. The next stage saw eminent scholars (such as Basil Liddell Hart and Charles Cruttwell⁷) writing academic histories, many still considered authoritative today, in which the war was typically portrayed as a poorly managed affair; there was however very little mention of the war at sea.⁸ The third stage of development for the literature began in the late 1960s when the '30-year rule' effectively opened the public archives. Since then, historians have been able to delve more deeply, refine, and in many cases redefine the standard interpretation of the war as a saga of military incompetence. Revisionist approaches have certainly developed different views in relation to the land war but there has been very little change in the way that research has portrayed the war at sea. These different stages in the evolution of the literature have each provided pieces of evidence to support all three parts of this thesis.

⁵ Note that this literature survey concentrates only on the English language sources.

⁶ The development of international law; the conduct and economics of the war; and legal aspects of the war.

⁷ Charles Robert Mowbray Fraser Cruttwell, *A History of the Great War, 1914-1918* (Oxford: Clarendon Press, 1934).

⁸ Despite his overall lack of comment on the naval side of the war, in listing the causes for victory, Liddell Hart considered that the British naval blockade 'ranks first and began first'. BH Liddell Hart, *The Real War 1914-1918* (London: Little, Brown & Co, 1930), p.476.

One book that encompassed the grand strategies of war and the development of states and conflicts is Philip Bobbitt's *The Shield of Achilles*;⁹ this book provided much of the strategic context for this thesis. In the first part of his book, Bobbitt investigates the relationship between law, strategy and history. He charts the development of the concepts of states and nations from princely states through to today's market state. Of greater relevance to this thesis however was the second part of his book. Here, he focuses very much on the place of international law in the society of states. Of particular use in explaining the state of international law at the end of the First World War was his chapter on the role of 'Colonel' House, a very close advisor to President Woodrow Wilson. Bobbitt's book brought a new perspective to the traditional view of how states and international law developed. It was a thought-provoking read and helped to elucidate some of the grand strategic issues covered by this thesis.

One of the most helpful books reviewed during this survey and one that was applicable to all aspects of the research for this thesis was Avner Offer's economic and social interpretation of the war, *The First World War: An Agrarian Interpretation*.¹⁰ Offer approaches the war in four parts. The first part of the book asks how Germany was defeated, by investigating the questions of food supply and distribution in wartime Germany. The second part looks at the bonds between Britain and her imperial suppliers of staple agrarian products such as wheat. This led on to the third part of Offer's book in which he describes the 'Atlantic orientation' of Britain. This refers to Britain's turn towards the Atlantic and away from the Continent, namely the increased reliance on overseas assets and strengthened links with the Dominions and the US. He describes how British planners realised that the threat from Germany warranted serious consideration and contingency planning. In an attempt to deter Germany from war, a policy of economic warfare was therefore agreed and endorsed. It is here that Offer acknowledges the driving

⁹ Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (London: Penguin Books, 2002).

¹⁰ Avner Offer, *The First World War: An Agrarian Interpretation* (New York: Oxford University Press, 1989).

power provided by Maurice Hankey, Jackie Fisher,¹¹ Lord Esher¹² and Reginald McKenna. The relations and correspondence between Hankey, Fisher and Esher are examined closely. In the final part of his book, Offer looks across the North Sea to Germany, from the Tirpitz plan of warship construction, through the decisions for unrestricted submarine warfare and finally to the defeat of Germany and the end of the blockade. Offer documents his arguments extensively and he includes a very comprehensive list of sources. He even goes as far as to comment on the quality of archival data and the correlation between quoted references to documents and the physical appearance of documents in the archives. Offer also uses many German sources to support his work. One area of particular interest concerns the morality and justification for the British blockade and more importantly for this thesis, the various stages of the U-boat campaign. Despite the existence of British plans for economic warfare that have been discovered during this research, Offer comments on the lack of such references in the memoirs of Churchill, Lloyd George and others. He discusses many of the key points of international law and looks at the ever-increasing importance of Hankey's pro-economic warfare attitude. The detailed references provide a more than adequate starting point for further research.¹³

In charting both the development of international law and the conduct of the war, the memoirs of David Lloyd George, Winston Churchill and Maurice Hankey were invaluable. Lloyd George, in his roles as Minister of Munitions and, from December 1916, Prime Minister,¹⁴ clearly had a pivotal role in First World War politics. It is easy to get the impression that he believed he was fighting not only the Germans but also obstinacy and

¹¹ Admiral of the Fleet John Arbuthnot 'Jackie' Fisher, 1st Baron Fisher, GCB, OM, GCVO (25 January 1841 – 10 July 1920).

¹² Brett, Reginald Baliol, second Viscount Esher (1852–1930). Esher was a permanent member of the CID and was instrumental in bringing about various War Office changes, including the formation of the CID. Offer, *The First World War*, ch.17.

¹³ Further background reading on economic warfare can also be found in John McDermott, 'Trading With the Enemy: British Business and the Law During the First World War', *Canadian Journal of History*, 32, no. 2 (Aug 1997), p.202.

¹⁴ Lloyd George served as Chancellor of the Exchequer between August 1914 and May 1915 then in Asquith's coalition War Cabinet, first as Minister for Munitions and then as Secretary for War. He succeeded Asquith as Prime Minister on 7 December 1916. Lloyd George resigned as Prime Minister in 1922 and never served in Government again, although he was leader of the Liberals from 1926-1931.

sloth within his own Government and Admiralty. Lloyd George's memoirs were notoriously selective and self-centred. One famous example was his visit to the Admiralty on 30 April 1917¹⁵ when, according to his account, he single-handedly persuaded the Admiralty to introduce the convoy system for merchant shipping.¹⁶ The decision to adopt the convoy system had however already been taken by the Admiralty on 26 April.¹⁷ Lloyd George's interest in the subject¹⁸ and the warning of his impending visit no doubt acted as a well-timed catalyst for this decision, especially given Admiral John Jellicoe's lacklustre leadership. This tendentious account highlighted Lloyd George's forceful personality, and the friction between himself and the Admiralty. The sixteen-year delay between the end of the war and the publication of his memoirs might have contributed to their unreliability, and their subjective and somewhat defensive tone. Notwithstanding this, they remain valuable for the lengthy citations from the extensive collection of private papers and official documents that he used whilst in office, which he retained when he left office. Lloyd George was however a charismatic leader and his memoirs reflect this style of leadership, but the reader should bear his overt subjectivity in mind when accepting his view of political and military decision-making.

Winston Churchill¹⁹ on the other hand produced a more down-to-earth account of the war, which included his time as First Lord of the Admiralty and his service as Minister of Munitions from July 1917.²⁰ His ministerial career covered the pre-war naval arms race and then the actual mobilisation of Britain for a war with Germany. One of the important

¹⁵ Lloyd George's impending visit to the Admiralty was announced by the War Cabinet on 25 April 1917.

¹⁶ 'I was the only person in authority who [...] 'saw it through' from the outbreak of the quarrel to the settlement of terms' - David Lloyd George, *War Memoirs I* (London: Ivor Nicholson & Watson, 1934), p.viii. A six-volume autobiography was also produced by Lloyd George: David Lloyd George, *War Memoirs*, 6 vols (London: Nicolson and Watson, 1933-1936) and Gilbert produced a good biography - Bentley B Gilbert, *David Lloyd George: a political life*. (London: Batsford, 1987).

¹⁷ Henry Newbolt, *Naval Operations* (London: Longmans, Green & Co, 1931) vol V.

¹⁸ Marder made numerous references to Lloyd George's 'informers' within the Admiralty, who were instrumental in forming his strong opinions on the convoy system. Arthur J Marder, *From the Dreadnought to Scapa Flow Vol IV. 1917: Year of Crisis*. (London: Oxford University Press, 1969), p.152.

¹⁹ Winston S Churchill, *The World Crisis 1911-1914* (London: Thornton Butterworth Ltd, 1924).

²⁰ In 1911, Churchill became First Lord of the Admiralty, a post he would hold into World War I. In 1915, he was one of the political and military proponents of the Gallipoli landings. He later resigned from the Government and rejoined the army, though remaining an MP, and served for several months on the Western Front commanding a battalion. In July 1917 Churchill became Lloyd George's Minister of Munitions.

points to note about Churchill is that he gave all his orders and instructions in writing. In the preface to the first volume, he states that he made as much use as possible of actual memoranda, directions, minutes, telegrams or letters written by him. His overall approach is not only to provide a panoramic view of the war but also to expand on certain dominating factors without supplanting the work of the Official Histories (already published by that time). His memoirs provide a more objective view of the war than those of Lloyd George utilising as much official material as possible. This approach and style of writing is certainly worth comparing with Lloyd George's 'how I won the war' approach. Churchill's four volumes provided a very good overview of the war at the strategic and political level but present insufficient detail on the submarine war to assist with further research in that field.

One of the most influential characters throughout the research for this thesis was probably one of the least known. As Secretary to the Committee of Imperial Defence (CID), Maurice Hankey had the ear of senior politicians and military personnel alike. His book, *The Supreme Command*²¹ tells the story of his rise from an ambitious Royal Marine officer at sea to a highly respected member of the CID. The book was compiled largely from his personal diaries, which survive today in readily accessible archives.²² Mixing, as he did, with the key politicians, Hankey provides many insights into the nature of the relationships between them. He had no need to take sides in the politics but it is obvious from the tone used in his memoirs and his actions that Hankey held Lloyd George in the highest regard; this opinion of Lloyd George might have coloured Hankey's objectivity slightly.²³ He filled his book with extracts from letters and speeches, combining to form a meticulous account of wartime politics. Notwithstanding this, it is also clear that Hankey always kept the best interests of British naval supremacy to the fore. Likewise, his

²¹ Maurice Hankey, Lord, *The Supreme Command 1914-1918*, 2 vols (London: George Allen & Unwin Ltd, 1961) vol 1.

²² The Hankey Papers can be found at the Archives Centre, Churchill College, Cambridge. The HNKY series comprises 135 boxes of official and personal papers, 1890-1963.

²³ In 1930, Hankey wrote to Lloyd George requesting his opinion on whether or not to publish his memoirs. Hankey, *Supreme Command*, vol I, p.5.

correspondence over the years with Lords Fisher and Esher showed that without being overtly insubordinate or divisive, Hankey was able to discuss important issues with these two elder statesmen. He was then able to plant the seeds of ideas from these discussions within members of the CID. Some of this was only hearsay but it certainly fits the profile of Hankey as a man dedicated to getting the best for the Royal Navy and for Britain.

One particular area of interest to this thesis was Hankey's chapter on the Declaration of London.²⁴ His discussion of the 1856 Declaration of Paris²⁵ and a brief mention of the 1907 Hague Conference supported this chapter. Despite publication some forty-three years after the war, his use of personal diaries written during crucial periods made this book one of the most important insights into the naval war.

Modern sources on the development of international law at sea prior to the First World War are rare but one book in particular compiled all the important Declarations and Conventions that defined the conduct of war at sea. *The Law of Naval Warfare*, edited by Natalino Ronzitti,²⁶ reviews many key documents and Declarations, and for each, includes general information, text of the convention, and a commentary. Of these, the commentaries were most useful in establishing the intended meaning of some of the (often deliberately) vague text. Extensive notes in the commentaries lead the reader to journal articles on the different conventions. This book was a key source when analysing the original text of the various legal documents that contributed to what came to represent international law.

Whilst Ronzitti's book concentrates on legal articles and statutes contributing to the state of international law, a small number of books investigate the general development of international law. Stephen Neff²⁷ views international law as a system of law enforcement and then investigates how it emerged as an instrument of state policy around the time of

²⁴ Hankey, *Supreme Command*, vol I, ch.9.

²⁵ See also Francis Piggott, *The Declaration of Paris 1856 - Law of the Sea*, 5 vols (London: University of London Press Ltd, 1919) vol 4.

²⁶ Natalino Ronzitti, *The Law of Naval Warfare* (Dordrecht, NL: Martinus Nijhoff, 1988).

²⁷ Stephen C Neff, *War and the Law of Nations: A General History* (Cambridge: Cambridge University Press, 2005).

the First World War. The book concludes by following the development of international law in the context of the 'just war' and how this correlated with the 'New World Order' that emerged from 1919 onwards. Looking more closely at the laws of armed conflict, Geoffrey Best²⁸ provides a thorough review of the most controversial aspect of warfare: the attempt to reduce the barbarity of war and somehow humanise it. Whilst he concentrates mainly on land warfare, some parts refer to the war at sea. This very readable and informative book provides a good education on the human aspects of international law.

The National Archives at Kew (formerly the Public Records Office) have provided most of the primary sources for this thesis. In particular, the papers from the Admiralty (Declaration of London and international law), the Cabinet Office (papers of the CID) and the Foreign Office (interaction with other nations, especially the US) collections have yielded the most information, supplemented to a lesser extent by pieces from the Treasury Solicitor's office. The Churchill Records Centre at Churchill College, Cambridge, home of the Fisher Papers, also helped to reveal more of the influence of Jackie Fisher, a man intimately involved in the workings of the Admiralty for many years. Many articles in contemporary journals were analysed; the *Papers of the Grotius Society* and the *American Journal of International Law* both contributed a great deal to the body of academic legal thought on both sides of the Atlantic. These two journals were the most prolific on matters of international law and provided a wealth of articles covering the entire range of research for this thesis.

The British Official Histories have also provided useful context,²⁹ most notably the *Naval Operations* series. This was started by Sir Julian Corbett (volumes I to III) and completed by Sir Henry Newbolt (volumes IV to V) following the death of Corbett in

²⁸ Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (London: George Weidenfeld & Nicolson Ltd, 1980).

²⁹ The Official History of the Merchant Navy was told in Ernest Fayle's *Seaborne Trade* series but added little to the body of knowledge. C Ernest Fayle, *Seaborne Trade*, 3 vols (London: John Murray, 1920).

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1922. The volumes most relevant to the submarine warfare campaign are volumes IV³⁰ and V,³¹ which cover the period from June 1916 to the end of the war. Volume IV explains the Admiralty's pessimism in response to the U-boat threat; describes some of the problems relating to submarine warfare; German reasoning behind the campaign; and finally outlines the devastating results achieved by Germany. As a counter to the gloomy ending of volume IV, volume V opens with a narrative of the U-boat campaign from April to August 1917. Most notable is an investigation of the gradual introduction of the convoy system and the associated US participation in the war as solutions to the U-boat peril. Overall, the *Naval Operations* series is a definitive account of the naval war based on official documents and sponsored by the Historical Section of the CID. *Naval Operations* gives an overview of different aspects of the war but the lack of solid references and the broad range of topics covered meant that the series was of limited value for further research. R.H. Gibson and Maurice Prendergast³² also provide a thorough narrative of the submarine war and their book includes a foreword by Earl Jellicoe, warranting its inclusion in the quasi-Official History category.

The most useful of all the Official Histories however was Archibald Bell's immense volume on the history of the blockade,³³ produced under the auspices of the Historical Section of the CID. This was of great value in providing an overview of the First World War from the diplomatic and economic perspectives. It opens with an extensive chronology, key events being listed by month and even by day. One of the key themes of the book is the rationing system, not a subject investigated in depth by this thesis. Despite this emphasis on rationing, it also covers in detail the various Orders in Council that

³⁰ Henry Newbolt, *Naval Operations* (London: Longmans Green and co, 1928) vol IV. For a more economics-based view of the blockade albeit not one written by naval historians, see Lance E. Davis and Stanley L. Engerman, *Naval Blockades in Peace and War: An Economic History since 1750* (New York: Cambridge University Press, 2006).

³¹ Newbolt, *Naval Operations V*.

³² RH Gibson and M Prendergast, *The German Submarine War 1914-1918* (London: Constable & Co Ltd, 1931).

³³ AC Bell, *A History of the Blockade of Germany and of the Countries Associated with Her in the Great War Austria-Hungary, Bulgaria and Turkey. 1914-1918*. (London: Historical Section, Committee of Imperial Defence, 1937).

contributed to much of the legal controversy and uses the theme of rationing as a thread with which to bind the story of the economic war.

From the production of the Official Histories onwards, the views of the war changed over the years. Basil Liddell Hart³⁴ produced a milestone in this trend of change with one of the classic histories of the First World War.³⁵ Although his work concentrates largely on the land war, it made interesting reading when trying to build up a picture of Britain at war.³⁶ His book predated the opening of the archives and consequently his bibliography relied on Official Histories and war memoirs published in the 1920s. He provides a particular view of the war that prevailed for many years, namely that of an ill-managed affair resulting from a clash of military and political egos.³⁷

The changing interpretations of the First World War became more evident with the opening of the archives in the 1960s. The topics then surveyed ranged from overviews to detailed analyses of technical, economic and financial aspects of the war. One of the best examples of a general history is Hew Strachan's *The First World War*,³⁸ an immensely detailed work in several volumes, the first of which covers the events leading up to the start of the war.³⁹ The approach taken by modern authors such as Strachan⁴⁰ when compared to Liddell Hart is a very detailed, analytical, and fully referenced one, not burdened by the perceived need to put across a particular view of the war.⁴¹

³⁴ The Liddell Hart Archives are at King's College, London:

<http://www.kcl.ac.uk/iss/archives/about/lhcma.html>

³⁵ Liddell Hart, *Real War*.

³⁶ Only a few books have concentrated on naval aspects of the war before the archives opened, such as Captain JS Cowie, *Mines, Minelayers and Minelaying* (London: Oxford University Press, 1949) and Vice Admiral Sir Arthur Hezlet, *The Submarine and Sea Power* (London: Peter Davies, 1967).

³⁷ Other important works in this era included Frank P Chambers, *The War Behind the War 1914-1918* (London: Faber and Faber Ltd, 1939), and Llewellyn Woodward, *Great Britain and the War of 1914-1918* (London: Methuen & Co Ltd, 1967).

³⁸ Hew Strachan, *The First World War: To Arms*, (Oxford: Oxford University Press, 2001) vol I. Chapter 5 covered the naval war and the institution of the blockade.

³⁹ The remaining volumes are yet to be published at the time of writing.

⁴⁰ Other good overviews of the war are: David Stevenson, *1914-1918: The History of the First World War* (London: Allen Lane, 2004); Niall Ferguson, *The Pity of War* (London: Penguin Books, 1998); and John Turner, *Britain and the First World War* (London: Unwin Hyman Ltd, 1988).

⁴¹ For new and alternative ideas on military history in general, see also: Jeremy Black, *Rethinking Military History* (London: Routledge, 2004), and Jeremy Black, *The Dotted Red Line: Britain's Defence Policy in the Modern World* (London: Social Affairs Unit, 2006).

From the US perspective, a few key figures such as Robert Lansing⁴² and Rear Admiral William S Sims⁴³ also manage to provide an insight into strategic thinking. US views on the legality of the belligerents' opposing naval strategies became vitally important during the conflict. Lansing's memoirs illuminate these perspectives.⁴⁴ Here, he discusses the gradual transition by the US from neutrality through war and back to peace. Likewise, Sims produced a personal view of the introduction of the US Navy into the war.⁴⁵ His book served to highlight the bonds of language and sentiment between Britain and the US that were used to the advantage of both countries.

So far, this review has looked at the English-speaking⁴⁶ view of the war but due to the author's lack of German, there has been a necessary reliance on secondary sources to redress this imbalance and provide a German view. The story of Germany's High Seas Fleet during the war, as told by Admiral Reinhardt Scheer⁴⁷ was certainly worthy of review. From the introduction, the work exhibits great bitterness towards Britain, not simply because Britain was victorious but because waging war on German civilians helped to achieve that victory. The pre-war arms race and the British economic blockade support Scheer's view that a war of economic attrition was forced on Germany and he appears exultant that the U-boat provided such an effective menace to Britain. The memoirs of Grand Admiral Alfred von Tirpitz⁴⁸ were also useful, but of greater use were the strategic analyses of Tirpitz and his plan by Volker Berghahn⁴⁹ and Jonathan Steinberg.⁵⁰ The

⁴² Robert Lansing was a US statesman and lawyer. He practised international law (1892–1915) and edited the *Journal of International Law* (1907–28). He was US Secretary of State (1915–20). He did not support the League of Nations, and was dismissed for running Cabinet meetings during President Wilson's illness.

⁴³ William S Sims (1858–1936). Promoted to Vice Admiral in April 1917, Sims was Commander, US Naval Forces in European Waters, with additional duties as naval attaché in London.

⁴⁴ Robert Lansing, *War Memoirs* (London: Rich & Cowan Ltd, 1935).

⁴⁵ William S Sims, *The Victory at Sea* (London: John Murray, 1921).

⁴⁶ For a French legal view of the blockade, see Louis Guichard, *The Naval Blockade 1914–1918* (London: Philip Allan & Co Ltd, 1930).

⁴⁷ Admiral Reinhard Scheer, *Germany's High Sea Fleet in the World War* (London: Cassell and Company Ltd, 1920).

⁴⁸ Grand Admiral Alfred von Tirpitz, *My Memoirs Vol I*, 2 vols (New York: AMS Press, 1919) vol 1.

⁴⁹ Volker R. Berghahn, *Germany and the Approach of War in 1914*, 2nd edn (New York: St Martin's Press, 1993).

⁵⁰ Jonathan Steinberg, *Yesterday's Deterrent. Tirpitz and the Birth of the German Battle Fleet*. (London: Macdonald, 1965).

memoirs of General Erich von Ludendorff⁵¹ provide a perspective on the land war but are very subjective and came across as an exercise in blaming others for the author's mistakes; nonetheless, they helped to broaden the spectrum of German views.

Other authors have chosen to concentrate on discrete aspects of the war. Annika Mombauer,⁵² for example, investigates the mainly German academic debates surrounding the origins of the First World War, whilst Kathleen Burk⁵³ considers Anglo-American relations in the years building up to the war. From Germany, one of the most useful accounts of the land war comes from Holger Herwig;⁵⁴ he also produced a good book on the development of the Kaiser's navy.⁵⁵ His study of the German naval programme offers useful points of comparison with John Sumida's book,⁵⁶ which examines technological advances in the naval sphere, particularly in Fisher's *Dreadnought* construction programme.

There have been few theses on the U-boat campaign⁵⁷ but a number of books have provided excellent background material⁵⁸ and Marder's previously cited epic *From the Dreadnought to Scapa Flow* series was one of the first of this type. Although Marder provides a thorough narrative of events, the many sources quoted suffer from a lack of clear traceability e.g. many references were made to *Admiralty MSS – Public Record Office, London*. This provided little assistance when contemplating further reviews of his

⁵¹ Erich von Ludendorff, *My War Memories 1914-1918*, 2 vols (Uckfield: The Naval and Military Press Ltd, 1919).

⁵² Annika Mombauer, *The Origins of the First World War: Controversies and Consensus* (Harlow: Pearson Education Ltd, 2002). See also Trevor Wilson, *The Myriad Faces of War* (Cambridge: Polity Press, 1986).

⁵³ Kathleen Burk, *Britain, America and the Sinews of War, 1914-1918* (London: George Allen & Unwin, 1985).

⁵⁴ Holger H. Herwig, *The First World War: Germany and Austria-Hungary 1914-1918* (London: Arnold, 1997).

⁵⁵ Holger H. Herwig, *Luxury Fleet: The Imperial German Navy 1888-1918* (London: Allen & Unwin, 1980).

⁵⁶ Jon Tetsuro Sumida, *In Defence of Naval Supremacy: Finance, Technology and British Naval Policy 1889-1914* (Winchester, Mass: Unwin Hyman Ltd, 1989). Sumida is an important naval historian of the pre-First World War era, having covered topics such as the works of Captain Alfred Thayer Mahan and naval administration. Jon Tetsuro Sumida, *Inventing Grand Strategy and Teaching Command*. (Washington D.C.: The Woodrow Wilson Center Press, 1997); Jon Tetsuro Sumida, 'British Naval Administration and Policy in the Age of Fisher', *The Journal of Military History*, 54, no.1 (Jan 1990), pp.1-26.

⁵⁷ Michael Wynford Dash, 'British Submarine Policy 1853-1918' (PhD, London University, 1990); Nicholas A Lambert, 'The Influence of the Submarine Upon Naval Strategic Thinking 1898-1914' (PhD, Bodleian College, 1992); WM Brown, 'Scientists and the Admiralty: Conflict & Collaboration in Anti-Submarine Warfare 1914-1921' (PhD, King's College, 1987).

⁵⁸ Edwyn Gray, *The Killing Time* (London: Seeley, Service and Co. Ltd, 1972).

work and raised questions over the validity of the sources and the comments made upon them.

Paul Halpern's *Naval History of World War I*⁵⁹ contains one of the most comprehensive lists of references and bibliography of any of the books in this study. He gives an excellent history of the U-boat campaign in particular. Not only does he examine the submarine crisis of 1917, but also earlier attempts by Germany at submarine warfare and Germany's justification for the implementation and subsequent reconsideration of the strategies of restricted and unrestricted U-boat warfare. Through extensive research of personal papers, Halpern manages to portray not only decisions, but also the reasoning behind them. Representation of the German side is also good. He describes in detail many of the key German officers and politicians in a manner normally reserved for the British and Americans in many other books.

Interestingly, Halpern also develops the little-known theme of how U-boats changed the manner in which the High Seas Fleet operated its ships in order to support submarine operations. He documents the impact of the U-boat on surface ships (especially the drain of middle ranking officers for U-boat duties) and even the army (from which skilled workers were demobilised for use in U-boat construction). Other books covering the naval war that provided good overviews include Robert Massie's *Dreadnought*⁶⁰ and Richard Hough's *Great War at Sea*.⁶¹ The effects of the British blockade of Germany are also covered in detail by C. Paul Vincent.⁶²

This review has by no means been exhaustive. The literature surveyed did, however provide a representative view of the different range of subjects covered by this thesis. The war memoirs and Official Histories made use of first hand experiences and the limited records that were available. There has been a shift from the subjective approach taken by

⁵⁹ Paul G Halpern, *A Naval History of World War I* (London: UCL Press, 1994).

⁶⁰ Robert K Massie, *Dreadnought: Britain, Germany and the Coming of the Great War* (London: Pimlico, 1992). See also Thomas Parrish, *The Submarine: A History* (London: Penguin Books, 2004), part 2.

⁶¹ Richard Hough, *The Great War at Sea, 1914-1918*. (Edinburgh: Birlinn, 2000).

⁶² C. Paul Vincent, *The Politics of Hunger. The Allied Blockade of Germany, 1915-1919*. (Athens, Ohio: Ohio University Press, 1985), ch.2.

the early writers, through to a far more objective approach as time has progressed. The later writers had no need to justify any wartime actions (and certainly not any actions of their own). They were able to take a more balanced view of the war although there was predictably a bias towards the Entente that could be accounted for by the greater number of records that survive today; many German records suffered from damage and loss during the Second World War, and dispersion following the post-war break-up of Germany.

1. The development of international law at sea and its state at the outbreak of the First World War

The 1909 Declaration of London was one of the most controversial documents in the history of international law. It attempted to provide a definitive statement of international maritime law, and resolve the various schools of legal doctrine in Britain, Continental Europe and beyond into a single unified document. In order to understand the state of international law in August 1914 and the Declaration's importance, it is necessary to explain some of the issues pertaining to international maritime law and the developments during the preceding years. In retrospect, the Declaration could hardly have come at a more important time, given the outbreak of war between the great naval powers a few years later. Some of the areas of law covered by the Declaration of London were the status of cargo as contraband; the principles of blockade; the doctrine of continuous voyage; and the status of merchantmen.

The Declaration emerged from a very complicated background. International law was a tenuous concept at best given the fact that international society⁶³ as we know it today was still quite immature, even at the turn of the twentieth century. International law had developed over the course of hundreds of years, with each state taking its own view of its rights. This concept of the developing international system and the states within it was one of Bobbitt's key themes⁶⁴ and it provides the context for consideration of the Declaration of London.

⁶³ A distinction can be drawn between the international system of states and the international society of states. The international system of states refers to the concept of sovereign nations which developed from the princely state of Machiavelli's time, to the nation-states referred to by Bobbitt at the start of the First World War. The international society of states refers to the interactions between sovereign states with regard to how they traded and interacted with each other e.g. diplomacy, war etc. In the early twentieth century, there were few permanent international institutions and these were devoted to 'technical' matters such as international postage. A good example of the developing relations between European states up to the turn of the twentieth century can be found in Part II of F H Hinsley, *Power and the Pursuit of Peace* (Cambridge: Cambridge University Press, 1963).

⁶⁴ Bobbitt, *Shield of Achilles*.

The Declaration of London was the result of the London Naval Conference, convened in December 1908 and closed in February 1909. This conference was convened following a recommendation in Annex 12 of the Second Peace Conference⁶⁵ held at The Hague in 1907. The original aim of Annex 12 had been to establish a method of appeal in order to settle differences arising from proceedings in neutral Prize Courts. These Courts were to be the source of much dispute in the future, as every individual country maintained its own Prize Courts, each with its own rules and regulations to decide the fate of property captured at sea. The case study on the SS *Zamora* in a later chapter covers the issue of subordination to the rules and regulations of the state.

Pre-dating the Hague Conference and London Conference was the 1856 Declaration of Paris. This Declaration represented the first modern attempt to codify international maritime law. The history of maritime law and its acceptance by nations prior to the Declaration of Paris however is quite convoluted; it is therefore worth taking an overview of this subject if only to identify the emergence of some of the language used during the debate over the use of international law during the First World War.

Early Maritime Law

The action of one belligerent state capturing property belonging to another belligerent state has long been considered commonplace in maritime war. The involvement of shipping belonging to neutral nations has only served to confuse the issue. From the fourteenth century, the duty of exercising prize jurisdiction lay with the English Court of Admiralty. The origins of Prize Law as recognised by both Britain and various Continental states were based on a number of ancient laws including the *Consolato del Mare*, Rhodian sea law, and the laws of Oléron, Wisbury and the Hanse Towns. The Catalan *Consolato del Mare* with roots in the early twelfth century, but more formally

⁶⁵ The First Peace Conference (summoned by Russia) began on 18 May 1899 and the resulting Hague Convention was signed on 29 July 1899, entering into force on 4 September 1900. The main effect of the Convention was to ban the use of certain types of modern technology in war: bombing from the air, chemical warfare, and hollow point bullets.

established in 1494, only dealt with matters of warfare sparingly, being founded on Roman maritime law and customary Mediterranean trading practices. This code of practice simply contained a set of rules allowing for seizure and appropriation of private enemy vessels and private enemy property as follows:

- a. Enemy goods on the ship of a friend are good prize.
- b. In such cases the captain of a neutral ship should be paid freight for his cargo so confiscated as if he had taken it to his primitive [i.e. original] destination.
- c. The property of a friend on an enemy vessel is free.
- d. The captors who have seized an enemy vessel and brought it into one of their ports should be paid freight on the neutral merchandise as if it had been carried to its primitive destination.⁶⁶

Neutral ships and goods were supposed to be restored to their owners even if they carried enemy goods or were transported on enemy vessels. Since the *Consolato del Mare* was only a code of practice, it was not always observed and there was general disagreement between states concerning the doctrine of 'free ships, free goods' versus 'enemy ships, enemy goods, enemy goods, enemy ships'.

Hugo Grotius

By the time of the seventeenth century, the laws of prize were as controversial as they would ever be during the First World War. The Dutch jurist and scholar, Hugo Grotius⁶⁷ produced his book *Mare Liberum* (The Free Sea)⁶⁸ in response to a major international dispute sparked by the Dutch seizure of a Portuguese vessel in the Straits of Singapore in February 1603. His book had implications for coastal waters as well as the high seas and for the West Indies as much as the East Indies. The English and the Scots took the book as an affront to their North Sea fishing rights and Spain took it as an attack on the foundations of its overseas empire.

⁶⁶ Edmund F. Trabue, 'The Law of the Sea and the Great War', *Virginia Law Review*, 6, no. 4 (Jan. 1920), pp.240-275.

⁶⁷ Hugo Grotius (Huig de Groot, or Hugo de Groot) (10 April 1583 - 28 August 1645).

⁶⁸ *The Free Sea by Hugo Grotius*, ed. by David Armitage, Natural Law and Enlightenment Classics, (Indianapolis, Indiana: Liberty Fund Inc, 2004).

The basis of Grotius' book was natural law. He looked at the subject of property and ownership of land and goods then compared that to the sea. He cited many classical sources in his work and he used these to demonstrate that the seas should be free for all to navigate, if only because the winds themselves blew from all directions and therefore allowed navigation to different lands. The fundamental difference between land and sea is that occupation of land is essential in order to claim it as property; occupation of the sea is not possible in the same way as land. This inherent inability to occupy immediately brings to mind the concept of blockade at sea, whereby a belligerent force attempts to occupy a body of water in order to deny its use to the blockaded nation. In short, the effect of the book was to be far-reaching into every area of international maritime disputes. Although Grotius' book was a fascinating read and important in the development of maritime law, it is sufficient at this point simply to acknowledge his role as a proponent of the concept of 'Freedom of the Seas' and of natural law in the freedom of navigation and trade.

Grotius⁶⁹ defined three types of goods: 'There are some objects which are of use in war alone, as arms; there are others which are useless in war, and which serve only for purposes of luxury; and there are others which can be employed both in war and peace, as money, provisions, ships and articles of naval equipment.' These distinctions survived from the sixteenth century all the way through to the Declaration of London, which attempted to secure some uniformity in the practice of contraband definitions. Grotius' first two definitions were clear and related to goods that could or could not be declared as contraband, later defined as absolute contraband and free goods respectively. The difficulties arose in the third definition, namely 'conditional' contraband.

In 1635, the equally famous (at the time) English jurist John Selden wrote his *Mare Clausum*⁷⁰ in rebuttal to Grotius, initiating a debate on maritime law that was to extend well into the nineteenth century. At the start of the eighteenth century, Cornelius Van

⁶⁹ *De Jure Belli ac Pacis Libri Tres* by Hugo Grotius, ed. by Francis W Kelsey, 2 vols (Oxford: Clarendon Press, 1925).

⁷⁰ John Selden, *Mare Clausum seu de Dominio Maris libri duo* (London: Will Stanesbeius, 1635).

Bynkershoek also held that a neutral is 'allowed to maintain a friendly intercourse with our friends, even if they are at war with each other, provided that we rigidly abstain from supplying them with contraband or conveying anything to blockaded places.'⁷¹ Conversely, Emmerich de Vattel, in the middle of the eighteenth century, upheld the rights of belligerents to restrict neutral trade, search neutral vessels on the high seas and disallow indemnities for unlawfully seized vessels and cargoes.⁷² This pattern of legal arguments and constant rebuttals was to become a regular feature of international maritime law.

Back in Britain, the introduction of the Navigation Acts, (first in 1651 and then in 1660) was to become a serious object of contention in the American War of Independence. Intended to protect Britain's trade, these Acts ensured Britain's continuing maritime supremacy by preventing foreign vessels from trading or carrying colonial produce. At the same time, Britain's treatment of her merchantmen caused Britain's former Allies against the French, the Dutch, to become increasingly upset. In 1780, Catherine II of Russia ordered a Declaration of Neutral Rights in order to protect her ships from harassment by the British. Sweden and Denmark soon joined Russia to form a League of Armed Neutrality. An alliance of this nature was a serious threat to Britain's continuing maritime supremacy; when Britain discovered that the Dutch had entered talks to join this League, it declared war on The Netherlands in December 1780. Disputes in maritime law therefore contributed directly to the outbreak of war with the Dutch. Disputes of this type were also commonplace when Britain went to war with France.

War with France

The wars between Britain and France⁷³ were rife with disputes over maritime rights. Both nations demanded that no neutral nation should trade with each other's enemies and

⁷¹ Cornelius van Bynkershoek, *De dominio maris dissertatio*, ed. by Ralph van Deman Magoffin, Classics of International Law (New York: Oxford University Press, 1923).

⁷² Emmerich de Vattel, *Le droit des gens, ou principes de la loi naturelle* (1758) (Washington: Carnegie Institute, 1916).

⁷³ French Revolutionary Wars 1793-1802; Napoleonic Wars 1803-15.

any breach of this situation would violate that nation's neutral status. With its powerful naval and merchant resources, Britain was in a strong position to uphold its views whereas Napoleonic France resorted to the Continental system⁷⁴ in order to deny Britain markets. On this subject, Joseph Marryat,⁷⁵ a Member of Parliament, in 1812 noted, 'The Americans suffered great hardships by the [British] Orders in Council; they were obliged to send their ships into British ports, and pay a certain centage, and which, if they did, they were certain of confiscation in the Enemy's ports.'⁷⁶

Between 1803 and 1806, Thomas Jefferson, the US President, attempted unsuccessfully to negotiate an agreement with Britain that would govern the maritime issues. At that time, Britain imposed restrictions on neutrals as it saw fit but, even in the face of many restrictions, the US had become the world's largest neutral carrier by the end of the French wars. Although not a great naval force by that time, control of a large trading fleet certainly eased the US towards an ever-greater position of maritime influence. Indeed the short British-American war of 1812-14 arose in part due to frustration at British restraints on neutral trade while Britain was at war with France.

The Declaration of Paris

During the 18th century and up to the beginning of the Crimean War in 1853, the British Government adhered to the rules of the *Consolato del Mare* such that only neutral goods onboard neutral ships were exempt from seizure. The administration of seizures at sea was finally established as a legitimate subject when it was recognised as a branch of law in the law of nations following the work of Lord Stowell, a Judge of the British Court

⁷⁴ The Continental system is discussed and defined later.

⁷⁵ MP for Sandwich, chairman of Lloyd's, he was also the father of the novelist Captain Frederick Marryat.

⁷⁶ Congress, *American State Papers: Documents, Legislative and Executive, of the Congress of the United States. Class I: Foreign Relations. Selected and edited under the authority of Congress* (Washington, DC: Gales and Seaton, 1832-1861).

of Admiralty from 1798-1828.⁷⁷ The early developments of international maritime law from the *Consolato del Mare* onwards have been discussed in detail by George Politakis.⁷⁸ Produced over fifty years prior to the Second Hague Peace Conference, the Declaration of Paris was the first important and major step towards unified international maritime law. Issued on 16 April 1856, the Declaration of Paris⁷⁹ came shortly after the end of the Crimean War. Until the Declaration of Paris, there were no internationally accepted rules of maritime law that governed private property. This is not to say that the Declaration of Paris removed any contention from international maritime law; it simply marked the beginning of a process of legal wrangling that was to continue for many years.

The Declaration of Paris was the first international instrument to provide general principles for the governance of the law of war at sea. The Declaration's preamble noted:

Maritime law in time of war has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts.⁸⁰

Despite all the controversy that surrounded it, the Declaration of Paris was only a short document and comprised just four simple statements namely:

1. Privateering is, and remains, abolished;
2. The neutral flag covers enemy's goods, with the exception of contraband of war;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.⁸¹

⁷⁷ William Scott, Lord Stowell (1745-1836). Called to the Bar in 1780. Advocate-General to the Admiralty (1782). In 1788, he became, successively, Judge of the Consistory Court of London, King's Advocate-General and Vicar-General for the Province of Canterbury. Ten years later, he became Judge of the Admiralty Court. These offices did not exclude him from a seat in the House of Commons and Scott sat from 1790 until he obtained his peerage, the Barony of Stowell, in 1821. He resigned his judicial office in 1828.

⁷⁸ George P Politakis, *Modern Aspects of the Laws of Naval Warfare and Maritime Neutrality* (Geneva: Graduate Institute of International Studies, 1998).

⁷⁹ United Kingdom Parliamentary Papers (House of Commons and Command), Vol LXI (1856), p.153.

⁸⁰ The Avalon Project at Yale Law School, *Laws of War: Declaration of Paris; April 16, 1856*, accessed 16 Jan 07. Available: <http://www.yale.edu/lawweb/avalon/lawofwar/decparis.htm>; Official Documents, 'The Declaration of Paris, 1856', *American Journal of International Law*, 1, no. 2, Supplement: Official Documents (Apr. 1907).

⁸¹ The Avalon Project at Yale Law School, *Laws of War: Declaration of Paris; April 16, 1856*.

The effects of these simple statements were far-reaching and it is therefore worth investigating the four Articles further.

Privateering

From the fifteenth to eighteenth century, belligerent powers were entitled to provide private ships with letters of marque. These letters authorised them to carry out hostilities at sea; the term 'hostilities' permitted the capture of enemy merchant ships. Viewed today as possibly little more than state-endorsed terrorism, the practice of privateering was at the time recognised as being lawful. The first Article of the Declaration of Paris demonstrated a commitment by the signing powers⁸² to end this traditional practice of privateering. This principle became a part of international law following the wide acceptance of the Declaration of Paris.⁸³ Generally agreed to be a fair and just way ahead, the first Article was relatively straightforward. The remaining three Articles however were to be the subject of debate for many years to come.

The Neutral Flag

The second principle covered the doctrine of 'free ships, free goods'. The only exception to this rule was contraband of war, a subject discussed at much greater length during the 1908 London Naval Conference. Logical extension of this doctrine showed that the protection afforded to enemy goods carried onboard neutral (i.e. free) ships was the same as any other cargo carried by a neutral vessel. It would appear however that this doctrine was only intended to cover private property and was produced in order to resolve a dispute over Baltic trade.⁸⁴ Goods belonging to an enemy state carried on neutral vessels were therefore liable for seizure and appropriation by a belligerent state.

⁸² Austria, France, Russia, Sardinia, Turkey and Great Britain.

⁸³ Piggott, *Declaration of Paris*, p.183.

⁸⁴ Charles H. Stockton, 'The Declaration of Paris', *American Journal of International Law*, 14, no. 3 (Jul. 1920), pp.356-368.

The Enemy Flag

The third principle was concerned with the converse case of the second, namely the 'enemy ships, enemy goods' doctrine. This Article was an attempt to legitimise this doctrine so that neutral goods would no longer be liable to seizure. The second and third Articles dealt with two important topics: contraband of war and blockade running. Despite use of the term 'contraband of war' throughout the Declaration of Paris, there is no evidence of any attempt to define lists of contraband even for items such as medical supplies. The term 'contraband' generally referred to goods liable for seizure if they had an enemy destination but at the time of the Declaration of Paris, it seems that the definition of an enemy destination was too difficult to define. The other point to note with the second and third Articles concerned vessels caught breaking a blockade. In this case, all goods were liable to seizure whether they were neutral onboard an enemy vessel, or enemy onboard a neutral vessel. The aim of such seizures would have been to deter traders from entering blockaded ports. The subsequent reduction in trade at the port would weaken its economy and potentially diminish the supplies available to any warships within that port.

Blockades

The principle that a blockade must be effective in order to be binding and maintained by a force sufficient to prevent access to the coast of an enemy is fraught with ambiguity and is certainly open to question. The implication of this Article was that paper blockades were no longer recognised and a blockade was to involve the physical use of blockading units at sea, but there was no definition for the effectiveness of the blockade. If the blockading force was to be truly effective then it should deny shipping any access to the blockaded enemy coast. Any blockading force must therefore be large enough to maintain its blockade across the whole enemy coastline in order to fulfil its function of providing a legally binding blockade. Likewise, there is no mention of any engagement between the blockading force and the enemy defenders. This Article did not provide a final answer to

questions on the definition of a blockade and left the debate open for further consideration.⁸⁵

In short, the Declaration of Paris laid some of the foundations for future international maritime law. These foundations were far from solid however and over the coming years, a number of wars were to raise further questions over the status of neutral vessels, blockades and the definition of contraband in its various forms. The next major milestone in the formal development of international maritime law was the Second Peace Conference held at The Hague in 1907.

Second Hague Peace Conference

The Second Hague Peace Conference⁸⁶ produced a number of conventions on international maritime law. These related, *inter alia*, to: the status of merchant ships at the outbreak of war, the conversion of merchant ships into warships, the laying of automatic submarine contact mines, bombardment by naval forces in time of war, the exercise of the right of capture in war, and the rights and duties of neutrals in time of war. An important point to note however is that the Second Peace Conference was only concerned with attempting to resolve contemporary outstanding issues and in doing so, it had no remit to look into the future and deal with emerging technological advances in weapons and tactics. One of the more pertinent issues to emerge from the Second Hague Peace Conference and of great relevance to the Declaration of London was the convention relative to the establishment of an International Prize Court.⁸⁷ The need for an International Court was an issue that had caused great international concern at the beginning of the twentieth century.

During the Russo-Japanese war,⁸⁸ the Russian navy sank six neutral British vessels without provision of compensation to the owners. Russia claimed that the destruction of

⁸⁵ Ibid., p.362.

⁸⁶ Miscellaneous, *Correspondence Relating to the Second Peace Conference held at The Hague in 1907* (London, HMSO 1908).

⁸⁷ Ibid., Annex 12, p.101.

⁸⁸ Naval Intelligence Department, *ADM 231/42 Report no 749, Diary of Russo Japanese War* (nd).

prize vessels such as the *Knight Commander* and the *Oldhamia* was legally justified due to the proximity of enemy bases, shortages of coal and because the Russian warships could not spare a prize crew.⁸⁹ This experience demonstrated that a Russian Court needed to hear any disputes over seizure. For a great imperial power such as Britain however, the requirement to resolve issues of maritime law in another nation's Court was totally unacceptable. There was therefore a need for a higher, International Prize Court to arbitrate over disputes between nations. In 1907, the Foreign Secretary Sir Edward Grey⁹⁰ appointed Sir Edward Fry⁹¹ as the leader of the British delegation to the Second Peace Conference, assisted by The Right Honourable Sir Ernest Mason Satow GCMG,⁹² The Right Honourable Lord Reay GCSI GCIE⁹³ and Sir Henry Howard KCMG CB, British Minister at The Hague. Also appointed were Lieutenant General Sir Edmond Roch Elles GCIE KCB⁹⁴ and Captain Charles Langley Ottley MVO RN⁹⁵ – Director of Naval Intelligence (DNI), as expert delegates in military and naval matters respectively. Grey laid out a number of topics for discussion in his letter to Fry, which included the elaboration of a Convention respecting the Laws and Practices of Naval Warfare:

Great Britain as a belligerent is not likely, in any conditions which can at present be foreseen as probable, to have to depend on the assistance of neutrals in the direct carrying out of operations of war. Her interests as a neutral require uniformity of practice on the part of neutrals generally, and it would be desirable that the rules which obtain in this country as regards to the obligations of neutrality should, if possible, obtain international sanction at this Conference.⁹⁶

From Grey's words it was clear that Britain wished to give due consideration to its rights both as a neutral and as a belligerent. These considerations would again be

⁸⁹ C.J.B. Hurst and F.E. Bray, *Russian and Japanese Prize Cases: Being a Collection of Translations and Summaries of the Principal Cases Decided by the Russian and Japanese Prize Courts Arising out of the Russo-Japanese War, 1904-05*. Edited by C. J. B. Hurst and F. E. Bray, 2 vols (London: np, 1912), pp.54-95. This reference also noted that the *Knight Commander* was actually carrying contraband railway materials and tinned food.

⁹⁰ Edward Grey, Viscount Grey of Fallodon (1862–1933). Foreign Secretary 1905-1916.

⁹¹ Miscellaneous, *Second Conference*, No 11 Sir Edward Grey to Sir Edward Fry, Foreign Office 12 June 1907.

⁹² Sir Ernest Mason Satow GCMG (30 June 1843 – 26 August 1929) was a British scholar-diplomat.

⁹³ Donald James Mackay, 11th Lord Reay (22 December 1839-1 August 1921) KT GCSI GCIE PC DL JP Bt.

⁹⁴ Elles, Sir Edmond Roche (1848-1934).

⁹⁵ Ottley, Rear-Admiral Sir Charles Langley (1858-1932). Director of Naval Intelligence, 1905-7, Secretary of the CID 1907-12.

⁹⁶ Miscellaneous, *Second Conference*, No.11, para.24.

important when formulating the Declaration of London. Grey was keen to ensure that Britain's full range of rights was established by legal and international agreement. Given the size of the Peace Conference,⁹⁷ establishing a concise set of rules for international maritime law would not be easy. As Fry later pointed out to Grey in his report from the Second Peace Conference:

One result of the Conference has been to bring into very definite contrast the views entertained by Great Britain and by certain other Powers on many questions of international law; and we earnestly hope that by means of a Naval Conference or otherwise, some of these differences may be arranged before the new International Court of Prizes is called upon to act.⁹⁸

The Second Peace Conference therefore managed to highlight, but failed to resolve, the issues of international maritime law that were causing so much disagreement at the time. Four of the greatest maritime powers at the time supported the establishment of an International Prize Court: Britain, Germany, France and the US.

The Additional Protocol

Prior to ratification of the Convention relative to the establishment of an International Prize Court however, Britain decided that a modification was required. The objection related to Article 7:

If a question of law to be decided is covered by a treaty in force between the belligerent captor and a Power which is itself or whose subject or citizen is a party to the proceedings, the Court is governed by the provisions in the said treaty. In the absence of such provisions, the Court shall apply the rules of international law. If no generally recognized rule exists, the Court shall give judgment in accordance with the general principles of justice and equity. The above provisions apply equally to questions relating to the order and mode of proof... The Court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the of [sic] complying therewith are unjust and inequitable.⁹⁹

Britain felt the idea that an International Court was a higher authority than a national one was an encroachment on its sovereign status because the International Court would have the power to alter the judgement made by a national Prize Court in the absence of any recognised international law. Britain also objected to entrusting its rights as a neutral and as a belligerent to a panel of fifteen judges, of which, only two would be sympathetic to the

⁹⁷ Forty-three nations were represented.

⁹⁸ Miscellaneous, *Second Conference*, No.14.

⁹⁹ ICRC, *Convention XII relative to the Creation of an International Prize Court*, 18 October 1907. Available: <http://www.icrc.org/ihl.nsf/FULL/235?OpenDocument>.

British and the US viewpoint. The US supported this objection, although not as strongly, as it had a further concern. There was a view amongst US experts in constitutional law that the above Article was inconsistent with the US constitution in that the judicial power of the US lay solely in the Supreme Court. Any appeals made to the International Prize Court might deprive the Supreme Court of its right to make a final judicial ruling. Scott cited the case of the *Circassian*¹⁰⁰ as an example of the Supreme Court being overruled in the past, and the US was therefore unwilling to submit again.

The result of these objections to the Convention was a period of discussion and negotiation during 1909 and 1910, resulting in the issue of the Additional Protocol.¹⁰¹ It acknowledged that some states had constitutional difficulties with a Court higher than their own sovereign ones and that in accepting the Convention, this in no way reduced or diminished their existing constitutional rights.

The Additional Protocol showed the importance that the US played in the sphere of international maritime law. The US, although not a great naval power in the traditional European sense, was able to exert a large amount of influence (along with Britain) on international maritime law and this trend was to continue over the coming years.

The London Naval Conference

Following the Second Peace Conference, in early 1908, Grey wrote¹⁰² to the British Ambassadors at Berlin, Madrid, Paris, Rome, St Petersburg, Tokyo, Vienna and Washington with a number of issues that he proposed would form the basis of a Naval Conference. At the time, there was no recognition of the possibility of submarine warfare being a significant naval factor, judging by the lack of references to it in this context. Once agreed at the Conference, these issues would then define the generally recognised

¹⁰⁰ James Brown Scott, 'The Declaration of London of February 26, 1909: Part I', *American Journal of International Law*, 8, no. 2 (Apr. 1914), pp.274-329.

¹⁰¹ ICRC, *Additional Protocol to the Convention relative to the Establishment of an International Prize Court*, 19 September 1910. Available: <http://www.icrc.org/ihl.nsf/FULL/260?OpenDocument>.

¹⁰² *Cd 4554 Correspondence and Documents respecting the International Naval Conference Held in London, Dec 1908-Feb 1909* (1909).

rules of international law. The following questions indicated those areas that Grey believed needed resolution:

- What were the definitions for different types of contraband and what were the rules of seizure?
- What was to be the extent and locality of a blockade?
- How did the doctrine of continuous voyage apply for contraband and blockade-runners?
- What was the legality of the destruction of neutral vessels prior to their condemnation in a Prize Court?
- What was the definition of 'unneutral service' for neutrals?
- What were the rules regarding the conversion of merchant vessels to warships on the high seas?
- What were the rules regarding the transfer of merchant vessels from a belligerent to a neutral flag?
- Was the deciding factor when determining the enemy nature of goods: the owner's nationality or domicile?¹⁰³

The Governments of the countries that Britain had involved then responded to Grey with letters of support for the Conference, along with memoranda containing their own points for discussion during the Conference. Lord Fitzmaurice¹⁰⁴ commissioned Professor TJ Lawrence¹⁰⁵ to produce some notes on the Japanese and German memoranda, which raised some interesting points. Lawrence could see quite clearly some of the problems that would arise in the future:

There is always the possibility that neutral states might be drawn into a maritime conflict by the sharp disagreement that is certain to arise between them and belligerent states over the contraband or non-contraband character of important articles of commerce.¹⁰⁶

This statement was quite prophetic when considering the situation faced by the US in later years. The German memorandum, in a point concerning a blockading force 'sufficient to prevent all navigation' between the open sea and the blockaded area, insisted on the use of a naval force. With ships clearly specified, Lawrence was concerned that if mines were employed as the 'naval force', then blockade might not have been lawful. Lawrence did not mention submarines but it is clear that by that time, the mine was already a legitimate part of the naval armoury.

Until the London Naval Conference, there existed two distinct schools of international law; those who supported the maintenance or extension of belligerent rights

¹⁰³ Ibid.

¹⁰⁴ Edmond George Petty-Fitzmaurice, 1st Baron Fitzmaurice, PC (19 June 1846-21 June 1935). Liberal politician and parliamentary-under-secretary for foreign affairs 1906-1909.

¹⁰⁵ Professor TJ Lawrence (1849-1919). Taught international law at Cambridge, Bristol and Chicago, and was a lecturer on international law at the Royal Naval College, Greenwich.

¹⁰⁶ T J Lawrence, *ADM 116/1070 Declaration of London & Naval Prize Law 1908-1911 notes on German and Japanese memoranda* (1908).

(British view) and those who sought to diminish belligerent rights (Continental view).

These two schools of thought had existed side by side during the eighteenth and nineteenth centuries and the Conference questioned their apparently irreconcilable differences. An example of these differences was the British ideal of increasing the effectiveness of blockades versus the Continental relaxation in the stringency of blockades. The following table summarises some of the views held by the various countries:

Table 1: Views of Various Countries Prior to the Declaration of London¹⁰⁷

Country	Issues
Austria-Hungary	No major issues raised prior to the Conference.
Britain	Wanted the Conference to agree the principles of international law. Wanted greater protection for neutrals carrying conditional contraband. Opposed to the destruction of neutral prizes.
France	No major issues raised prior to the Conference.
Germany	Keen to abolish the doctrine of continuous voyage.
Italy	No major issues raised prior to the Conference.
Japan	Supported the establishment of the Prize Court in order to protect commercial interests given recent experience in war against Russia.
Russia	Supported the establishment of the Prize Court in order to protect commercial interests given recent experience in war against Japan.
Spain	No major issues raised prior to the Conference.
US	Supportive of the Prize Court. Initially opposed the abolition of the doctrine of continuous voyage. Wanted greater protection for neutrals carrying conditional contraband. Keen to allow transfers of belligerent vessels to neutral flags.

The British approach to the Conference was to separate any new issues from existing ones, but due to the complexity of the issues under discussion, the new rules and existing rules could not be separated in practice.

In November 1908, Grey appointed the distinguished jurist Lord Desart¹⁰⁸ as the head of the British delegation at the international Naval Conference.¹⁰⁹ Rear Admiral Ottley, a representative at the Second Peace Conference who by then was the Secretary to the CID, and Captain Slade the new Director of Naval Intelligence, would assist Desart.

¹⁰⁷ Ellery C Stowell, 'The International Naval Conference and the Declaration of London', *The American Political Science Review*, III, no. 4 (1909), pp.489-506.

¹⁰⁸ Hamilton John Agmondesham Cuffe, fifth earl of Desart (1848-1934). Desart served briefly as a midshipman in the Royal Navy before pursuing a career as a lawyer and public servant. A former Director of Public Prosecutions, Desart became involved in naval matters when he served as the British member on the North Sea Inquiry in Paris in 1905, investigating the attack by the Russian fleet on British fishing vessels off Dogger Bank. In 1910, he became one of the four British members of the International Court of Arbitration at The Hague.

¹⁰⁹ Miscellaneous, *Second Conference*, no.13.

Also appointed were Mr CJB Hurst¹¹⁰ (an expert on Prize Law with experience from the Russo-Japanese war), Mr Eyre Crowe (providing Foreign Office assistance) and three secretaries. One significant point to note is that in a letter from Grey on November 14 to Sir F Bertie,¹¹¹ Grey reported that Desart had mentioned the co-operation of the 'distinguished French jurist M. Fromageot' in the preparation of the draft Declaration. The inclusion of a French jurist rather than a British one was to be a contentious issue in later Parliamentary debates over the subsequent Declaration. It was felt that Desart was however, quite right to employ M. Fromageot in this task because so much international legal work was conducted in French at the time that it would take an expert like Fromageot to understand the nuances of the law in the French language.

By December 1908, Grey was in a position to provide Desart with details of each area where solutions were required.¹¹² The subject of blockade was open to different interpretations regarding its effectiveness and the force used to maintain it. Grey noted a divergence of opinion between Britain and the Continental nations, notably France, in the means by which access to a blockaded coast could be prevented. The Continental view maintained that there existed an arbitrarily defined line of blockade, not necessarily referring to the coastline. Any attempt to cross this line would be considered an offence. Under this Continental approach, a belligerent wishing to prevent a neutral vessel from entering a blockaded port should first stop it, issue a written warning in the ship's papers as it approached the line of blockade, and then apprehend it only if it attempted to enter the port, having already received a formal written warning. The British and US view maintained that any attempt to reach the blockaded coast would have been an offence, especially as a neutral vessel could simply wait for the cover of darkness or bad weather before making a run for the port. This Anglo-American approach therefore penalised a vessel's intentions rather than any physical act; this approach was instrumental in the

¹¹⁰ Hurst and Bray, *Prize Cases*.

¹¹¹ Miscellaneous, *Second Conference*, no.15.

¹¹² *Ibid.*, no.17.

Union blockade of the southern ports during the American Civil War. This was just one example of different nations' interpretation of maritime law in the absence of any agreed and unambiguous international law. In this particular example though, the British delegation examined all the cases of seizure for blockade running and found that none were made at a considerable distance from the blockaded port. The British delegation was therefore prepared to accept a compromise of its views on this basis.¹¹³

The delegates to the international Naval Conference were clearly determined to find solutions to as many issues on the agenda as possible. The report of the Drafting Committee to the Conference¹¹⁴ noted that it had settled all but two of the original questions on the agenda. These two items referred to the legality of the conversion of merchant ships to warships at sea and the determination of the nature of enemy goods by domicile or nationality of the owner.

The solutions to all these points of law were extracted from various views, practices and *media sedentia*.¹¹⁵ Although not always in agreement with the sentiments of any particular country, the solutions still conformed to the essence of those attitudes. One overarching factor of the report was that all the rules should be read as a single body:

In fact, if one or more isolated rules are examined either from the belligerent or neutral point of view, the reader may find that the interests with which he is especially concerned are jeopardised by the adoption of these rules. But they have another side. The work is one of compromise and mutual concessions.¹¹⁶

The emphasis on compromise and concessions was to play an important part on the forthcoming debates over the final ratification of the Declaration of London. It is worth noting that the original reason for calling the Conference was to agree on the establishment of an International Prize Court yet the results of the Conference seemed to be independent of the introduction of any such Court. The impending formation of the Court however enabled the atmosphere of compromise and discussion but even without this, the resultant

¹¹³ Stowell, 'Naval Conference', p.504.

¹¹⁴ Miscellaneous, *Second Conference*, no.18.

¹¹⁵ *Media sedentia* (L) to reach agreement or compromise while seated.

¹¹⁶ Miscellaneous, *Second Conference*, no.18.

Declaration of London was still able to stand on its own as a document worthy of ratification.

Declaration of London

The Declaration of London contained seventy-one Articles in total although these were broken down into nine Chapters and some final provisions;¹¹⁷ each of the nine Chapters is examined here. Frits Kalshoven produced a commentary on the Declaration in Ronzitti's book¹¹⁸ although the final report of the Drafting Committee¹¹⁹ (generally known as the Renault Report after the French Chairman of the Drafting Committee, M. Louis Renault) has been the primary reference for the Declaration of London.

Chapter One – Blockade in Time of War

The twenty-one Articles of the first Chapter referred only to blockades during wartime, enforced by warships. It therefore followed that a blockade could only be legally binding if it occurred during a period of hostilities. Following on from Article 4 of the Declaration of Paris, Articles 1 to 7 provided rules for the definition and legal nature of a blockade. It became clear from the onset that the Declaration of London was intended to be a juridical tool for a Prize Court. The Renault Report explained the rather vague statement that, 'The question of whether a blockade is effective is a question of fact' such that the exact composition of the blockading force could never be specified. The decision on the effectiveness of a blockade depended on each case, but the report did not state who had to agree to the composition of this force. The element of 'fact' derived from whether or not the blockade had indeed proven to be effective. Any Prize Court, be it national or international, must therefore make the decision on effectiveness. Other Articles applied common sense rules to a blockade such that the Commanding Officer of a blockading force

¹¹⁷ See Appendix 1.

¹¹⁸ Ronzitti, *Naval Warfare*.

¹¹⁹ Miscellaneous, *Second Conference*, no.20.

might allow neutral warships to pass, and in cases of distress, allow neutral merchant vessels to enter a blockaded port on the provision that no cargo was shipped or discharged.

Chapter 2 – Contraband of War

Contraband of war was mentioned briefly in the Declaration of Paris but no attempt was made to state which items constituted contraband. Cargoes could be classed in three ways: absolute contraband, conditional contraband and free goods. The main difference between absolute and conditional contraband was that goods declared as absolute contraband were used exclusively for war. Items of conditional contraband were susceptible for use in war but could also serve peaceful purposes. Free goods were therefore those items that definitely did not have a specific wartime use. Although the Declaration of London made the novel step of defining lists of contraband, Articles that allowed states to add to the lists as they required, weakened the strength of these lists (but there was no clear mechanism for the removal of items from the lists). These amendments also needed to be declared to other powers (neutral powers only during wartime). The Declaration always seemed to allow for a ‘military necessity’ clause in such Articles. For example, Article 29 stated two specific categories that could not be treated as contraband, but for the first category (items serving exclusively to aid the sick and wounded) they could still be requisitioned if their destination was enemy territory, compensation could be paid and a ‘military necessity’ existed. The inclusion of such a term was indicative of the great influence of the military at the time, given the importance of strong military forces for the maintenance and defence of Britain and its worldwide interests. Even from this simple examination of contraband, it is obvious that there were a number of legal loopholes, exploitable in the future by a belligerent state.

A key feature of contraband was that it must be destined for enemy territory. This was a difficult area for the delegates of the Conference to establish due in part to the doctrine of ‘continuous voyage’. This doctrine stated that it was the ultimate destination of

the goods, not the vessel, that was important. The debate on this subject again highlighted the delegates' different views on the law and therefore the need to find international agreement. The eventual compromise to this deadlock was that the doctrine of continuous voyage would apply to absolute but not to conditional contraband. The exception to this would be for conditional contraband where the enemy country had no coastline and the doctrine must apply by default. The need for definitions of contraband is noteworthy because at the time of the Declaration, the basis of military considerations (as they often still are) was that of 'fighting the last war.' Later deliberations on contraband were concerned with particular industries or circumstances in which goods could be used. In a time of economic warfare, any goods destined for that nation would inherently have been part of the war effort and therefore contraband. By this argument and with hindsight, the debates over contraband and its various definitions were almost irrelevant.

Chapter 3 – Unneutral Service

This Chapter laid down the circumstances under which a neutral vessel could be condemned or even worse, considered as an enemy vessel. In the former case, this applied to the carriage of personnel 'embodied' in the armed forces of the enemy (although suitable provision was made for vessels unaware of hostilities or unable to land their passengers). The latter case involved greater direct interaction with the enemy state; this could include a neutral ship supplying coal or supplies to the enemy, or perhaps even vessels under convoy if the convoy could be viewed as an enemy unit.

Chapter 4 – Destruction of Neutral Prizes

None of the delegates at the Naval Conference could have perceived the wholesale destruction that the U-boats were to inflict on Allied and neutral shipping during the First World War. The destruction of a neutral prize was to be a last resort only when observance of the rules would, 'involve danger to the safety of the warship or to the

success of the mission in which she is engaged at the time.’ The British delegation opposed this provision and wished to see much tighter controls on the Article. Acceptance of the Article by Britain was part of the overall spirit of compromise however since many states regarded the sinking of prize vessels as a right and the Declaration tried to reduce the chances of such sinkings by introducing rules.

Chapter 5 – Transfer to a Neutral Flag

This Chapter of the Declaration stated that the transfer of an enemy vessel to a neutral flag was void unless proof existed that the transfer was for a legitimate reason and not to avoid the consequences of being considered an enemy vessel. This was then qualified to cover circumstances at the outbreak of a war and the conditions under which the transfer of flag took place (both physical and contractual). This Chapter becomes important when considering some of the trade implications involved. The US, for example wanted to make the transfer to a neutral flag as easy as possible; in the event of a European war a belligerent could transfer its vessels to US (or other neutral) flags and thereby in theory continue to ply its original, pre-war trade without any interference from other belligerent nations.

Chapter 6 – Enemy Character

Article 57 stated ‘the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly’. The next Article then stated that the neutral or enemy character of goods found onboard an enemy vessel was determined by ‘the neutral or enemy character of the owner.’ In the absence of proof, goods were presumed to be enemy. This Chapter failed to provide an explanation of the character of the owner since there was an outstanding debate over whether the owner’s nationality or his domicile determined his status.

Final Chapters

The final three Chapters of the Declaration contained Articles on the subjects of convoy, resistance to search and compensation. Forcible resistance to search rendered a vessel liable to condemnation and to have its cargo treated as the cargo of an enemy vessel. There was neither the definition of forcible resistance nor the level of violence permitted by the blockading warships.

The Ratification Debate

Although signed by the delegates of ten nations including Britain, Germany and the US, the Declaration of London still required national ratification in order to become legally binding. Part of the problem with the Declaration of London was the conundrum that it produced. A great deal of effort had been expended in trying to codify elements of international law but at the same time, nations were unwilling to trust the judges of the International Prize Court, whose duty it was to uphold and interpret this law. Two distinct and particularly vocal groups, Parliament and the representatives of seagoing commerce, championed the British ratification debate. Many of the objections to the Declaration arose out of a failure to view the Declaration as a whole, and on perceived losses to Britain's power as a trading nation. These objections, especially in the commercial debate did however come across as being somewhat irrational at times, given the apparent gains for Britain.

Commercial Arguments

The responses by various Chambers of Commerce¹²⁰ asserted in general that the acceptance of the Declaration of London would weaken Britain's maritime power. As a belligerent nation, it appeared that Britain would suffer little disadvantage, but as a neutral, its rights were potentially gravely infringed. Part of this view was because the Declaration

¹²⁰ Miscellaneous, *CD 5418 Correspondence Respecting the Declaration of London* (HMSO, 1910).

of London had been analysed in a piecemeal manner by the commercial community, rather than taken as a whole as Lord Desart had intended. The commercial community did not seem to understand that since Germany had become a military rival, sea borne trade was no longer immune from attack and the Declaration of London had brought about a number of gains that could actually assist maritime commerce. Despite assurances from the Royal Commission on Food Supplies and naval authorities, old apprehensions lived on. Many of the misgivings concerned goods susceptible to classification as conditional contraband, and the concessions to the hitherto Continental practice of destroying captured merchant vessels.

The Glasgow and Edinburgh Chambers of Commerce, along with the Leith Shipowners Society, represented the views of the Scottish part of the industry, supported by branches of the Navy League throughout Britain.¹²¹ The Glasgow Chamber of Commerce¹²² raised concerns over the definitions of contraband, destruction of neutral prizes, unneutral service and the conversion of merchant vessels into warships on the high seas. This latter objection voiced the concern that the Declaration did nothing to stop a merchant vessel trading far from home from being converted into a warship at sea, especially at the outbreak of a war, in order that it could then act as a commerce raider against its former fellow traders.¹²³ The Leith Chamber of Commerce¹²⁴ echoed these views and noted that there could be serious limitations on the supply of foodstuffs to Britain in the event of war. A belligerent power could, for example, classify food as absolute contraband and seize all foodstuffs intended for the enemy country including the civil population.¹²⁵ The principal concern voiced by the Edinburgh Chamber of

¹²¹ The Navy League did not represent commercial interests but was tied to the debate in its role as a pressure group campaigning for the expansion and modernisation of the Royal Navy.

¹²² Miscellaneous, *CD 5418*, no.1.

¹²³ The issue of whether or not such conversions could be considered as privateering, outlawed under the Declaration of Paris, was to be discussed towards the end of the First World War when the abrogation of the Declaration of Paris was being considered.

¹²⁴ Miscellaneous, *CD 5418*, no.5.

¹²⁵ An example being French interdiction of Chinese rice supplies in its 1885 war with China.

Commerce¹²⁶ was that the Declaration of London was a work of 'compromise and mutual concessions.' It was felt that the Declaration would only add to the disabilities experienced by Britain in the event of war, adding 'nothing shall impair Great Britain's maritime position in time of war.'

The Foreign Office responded to all the correspondence from these commercial organisations, answering specific questions with clarification of the facts since the opinions stated by these organisations were often exaggerated or inaccurate. In a response to criticisms made by the Navy League (Bristol Branch)¹²⁷ for example, the Foreign Office stated:

Sir Edward Grey cannot but regret that your committee should have so categorically condemned important international agreements without more thoroughly acquainting themselves with the exact purport and scope of their provisions.¹²⁸

This rather blunt put-down indicates that the Foreign Office attached little weight to the opinions of the various commercial organisations. With these opinions in mind, it is worth considering the gains and concessions made by Britain as both a neutral and as a belligerent relative to the situation without the Declaration in place.

Britain as a Belligerent

As a belligerent nation, the gains and concessions were about equal. Looking first at the gains, Britain gained the right to capture absolute contraband cargo when there was evidence that it was destined for the enemy's country, even if the immediate destination of the goods was a neutral port – the doctrine of continuous voyage. Secondly, a vessel was liable to confiscation if the amount of contraband it carried formed more than half (by weight, volume or freight) of its cargo. Finally, a British Court could confiscate any enemy merchantmen transferring to a neutral flag within a month of, or at any time after, the outbreak of hostilities, unless the neutral could prove that avoidance of capture was not

¹²⁶ Ibid., no.7.

¹²⁷ Ibid., no.9.

¹²⁸ Ibid., no.10.

the reason for transfer. Note that the burden of proof lay with the neutral, a case of guilty until proven innocent.

The concessions made by Britain were relatively minor and did not have any practical effect on operations. Vessels could no longer be captured at any great distance from a blockaded coast for attempting to break a blockade; this had never previously led to confiscation anyway. Secondly, neutral ships under the convoy of a neutral warship could not (except under exceptional circumstances) be searched; in practice, this right had not been exercised for over one hundred years. The final concession gave up the right to treat non-contraband produce of an enemy state, owned by a neutral subject resident in a neutral state, as enemy property. Again, this was a relatively minor concession, as it appeared to be more pertinent to enemy exports than economic starvation through an import blockade.

Britain as a Neutral

The neutral gains made by Britain over its traditional laws and practices appear to have outweighed the concessions that were made. As Britain had no immediately obvious plans to go to war in 1909, the gains and concessions as a neutral were therefore equal in importance to those as a belligerent. The first gain was the exception of foodstuffs and fuels from the list of absolute contraband, followed closely by the classification of raw industrial materials as free goods. The third gain used the doctrine of continuous voyage to Britain's advantage in that cargoes of conditional contraband shipped to a belligerent country via neutral ports remained immune from capture as long as they were onboard a neutral vessel with a neutral destination. The fourth gain was exclusion of the doctrine of continuous voyage from the law of blockade. The fifth provided compensation for neutral merchants whose vessels and cargoes had been improperly sunk by the captor or captured without sufficient reason. The final gain was the immunity from capture of a neutral vessel that was *innocently* transporting individuals embodied in a belligerent's armed forces or

which was carrying despatches of a belligerent nation, *without* the knowledge of the master, owner or any other responsible person.

The only loss from Britain's perspective was that it was unable to exclude a clause stating that a belligerent could (in certain) circumstances sink neutral prizes; it appeared that Britain was in the minority in opposing this clause and that other nations would have been unwilling to consider any compromise on their supposed right to sink captured prizes.¹²⁹ This apparent minor concession would later prove to be a great strategic loss and would of course become a significant and costly factor in German submarine warfare. Perhaps if Britain had tried harder to hold its ground then the sinking of neutral vessels would not have been permissible. Later, Germany achieved great strategic effect by exploitation of this rule in the various stages of its U-boat campaign.¹³⁰ The majority of gains appeared to be in Britain's favour as a neutral, but the Parliamentary debate fuelled the controversy over the Declaration of London.

Parliamentary Debate

British politics at the time of the Declaration of London were torn by the conflict between the Liberal-dominated House of Commons and the Conservative-dominated House of Lords. The debate in Parliament¹³¹ tended to be very emotional, exemplified by the book written by Thomas Gibson Bowles MP¹³² in which he voiced his opposition to the ratification of the Declaration.¹³³ He argued that economic pressure had been decisive in the past when exerted by naval means. He saw the Declaration as a method for reducing

¹²⁹ The debate on captured prizes still seemed to indicate a duty of care towards the crews of these vessels as destruction seemed only to be permitted once the ship's papers had been removed, and the crew evacuated.

¹³⁰ Britain's view was later vindicated by the London Naval Protocol of 1936 in which submarines were ordered to follow the same rules as surface ships; they could not destroy a prize until the crew had been safely evacuated and would be in no further danger, even in the ship's boats. See ICRC, *Procès-verbal relating to the Rules of Submarine Warfare set forth in Part IV of the Treaty of London of 22 April 1930*. London, 6 November 1936. Available: <http://www.icrc.org/ihl.nsf/FULL/330?OpenDocument>.

¹³¹ *International Naval Conference* (House of Commons Session 1909 (9 Edward VII), HMSO, 1909).

¹³² Thomas Gibson Bowles MP (1842-1922). Often known as Tommy Bowles, he was Conservative MP for King's Lynn 1897 to 1906, then changed party and was elected Liberal MP for the same town again in 1910. He subsequently lost his seat in the second 1910 election and promptly returned to the Conservative party. He was also founder of the magazine *Vanity Fair*.

¹³³ Thomas Gibson Bowles, *Sea Law and Sea Power* (London: John Murray, 1910).

the effectiveness of British sea power. This assumption was however based on flawed logic, as Hankey was to argue:

There is no instance to be found in modern history of a war in which commerce has played a vitally important part, owing to the fact that recent wars have not been fought between nations susceptible – as are Great Britain and Germany – to attack through their commerce, and there are no data on which to calculate what means it will be necessary to adopt in such a war. The difficulties of blockade, due to modern inventions, suggest that even greater latitude may be necessary in the future than in the past. The negotiators of the Declaration of London have made the fatal error of basing their argument not on the experience of past wars (for in the Napoleonic wars and all previous wars, when commerce was an important consideration, the greatest latitude was claimed and exercised) and *not* on a scientific appreciation of possible future wars, but have rested themselves on the experience of a few very recent wars in which the weapon of sea power, as a means of putting pressure to bear on the inferior naval power, had no scope for exertion.¹³⁴

Here, Hankey explained that although economic warfare had the potential to affect adversely the commerce of both Britain and Germany, there was no previously comparable conflict from which to draw a precedent.

The official subject of the debates in Parliament was the enactment of the Naval Prize Bill, intended to embody the Declaration of London, and Britain's acceptance of a new International Prize Court. The Parliamentary debates of the Naval Prize Bill as recorded in *The Times'* Parliamentary Reports were often quite heated and filled with patriotic bombast, especially in the House of Commons, where the majority of debates were held.

The Bill's first debate in the Commons started in early April 1909 and continued intermittently until 7 December 1911 when the Commons finally passed the Bill with 172 ayes against 125 noes. This success was short-lived as the Lords then rejected the Bill just five days later with 145 not content against only 53 content. The rejection of the Naval Prize Bill by the House of Lords is not surprising: the two general elections of 1910 were fought largely over the Liberals' proposals to limit the powers of the House of Lords, and relations in 1911 were very embittered between the Conservative majority in the Lords and the Asquith Government. Any opportunity to oppose the Government on 'patriotic' grounds was highly welcome in the House of Lords. This rejection of the Bill had the

¹³⁴ Cited in Bell, *Blockade*, p.21. No date is given for this citation but Hankey probably made his comment after the Declaration of London and prior to the outbreak of war.

effect of postponing the second debate in the Commons until beyond that session, leading to the effective withdrawal of the Bill.

On 7 April 1909, Mr Leverton Harris¹³⁵ began the debate on the Declaration of London.¹³⁶ He questioned a number of items within the Declaration and took exception to the fact that the previously mentioned jurist M. Fromageot (a member of the French delegation) was assisting the work of the Drafting Committee. Mr McKinnon Wood,¹³⁷ Under Secretary of State for Foreign Affairs, easily dealt with this question when he pointed out that M. Fromageot was employed not to frame the British proposals but in fact to deal with the volume of reports received by the Drafting Committee.¹³⁸ With the report written in French, M. Fromageot's exact and complete knowledge of French legal phraseology made him a more appropriate choice than any equally distinguished British jurists were.

In the same manner as the representatives of maritime commerce, Harris also voiced his concerns over British concessions, particularly over the consideration of food as contraband. Under previous law, he noted that food could only be considered contraband if it was destined for a 'beleaguered fortress' but that the definition was now much wider. Harris quoted figures from the Food Supply Commission in order to paint a dark picture of the reliance of Britain on maritime trade and its vulnerability to a few strategically placed commerce destroyers. In addition to other concerns over the translation and meaning of certain words in the original French language text of the Declaration, he concluded on the subject of the doctrine of continuous voyage, saying that Britain had, 'Given away one of the most ancient and forcible points of international law which hitherto we have always upheld.'¹³⁹ Despite the strong language used here, he conceded that this point had only

¹³⁵ Harris, Frederick Leverton. Conservative MP for Tynemouth in 1900-06, Stepney 1907-10, East Worcestershire 1914-18. His interests were shipping and trade; during the First World War, he was a key figure in the Restriction of Enemy Supplies Department of the Foreign Office.

¹³⁶ House of Commons, *Naval Conference*, p.669.

¹³⁷ Thomas McKinnon Wood (1855-1927) Liberal: Glasgow, St Rollox.

¹³⁸ 'House of Commons', *The Times*, 8 April 1909, p.6.

¹³⁹ House of Commons, *Naval Conference*, p.669.

been given up for conditional contraband. Mr Stewart Bowles¹⁴⁰ then followed Harris, who stated initially that, 'I deplore on every ground this Declaration of London.'¹⁴¹ Bowles relied on much more patriotic language in his rejection of the Declaration on the basis that Britain as a naval power and only a naval power was entirely dependent on its strength at sea. Unlike the neighbouring Continental powers with their strong armies, Britain's interests as an island were 'always and invariably' in opposition to those of other countries.¹⁴² He believed that Britain should maintain and not diminish its rights as a belligerent power as they could be, following the introduction of an International Prize Court with authority 'over and above the highest judicial tribunals of the country.'¹⁴³ He questioned the very need for an International Prize Court on the basis that Prize Courts had always been regarded as international by their judges. He cited Sir William Scott (later Lord Stowell) who, in *The Recovery* case in 1807 said, 'In the first place it is to be recollected, that this is a Court of the Law of Nations, though sitting here under the authority of the King of Great Britain. It belongs to other nations as well as to our own.'¹⁴⁴ Bowles was in general agreement with Harris with the exception of one point, namely that of food supply. Although Harris had cited information from the Food Supply Commission, Bowles stated, 'The food supply of this country...comes in a stream and volume so enormous that the whole fleets of the whole earth doing their worst, I believe, could hardly seriously affect them.'¹⁴⁵ With the benefit of hindsight, it is clear that Bowles never imagined the devastating effect that so few German U-boats would have on his country's food supply in just a few years' time.

By early 1911, the debate over the Declaration of London had reached a point where stronger Government support was required and the Foreign Secretary therefore circulated a

¹⁴⁰ George Frederic Stewart Bowles. Conservative MP for Norwood Division of Lambeth 1906-1910. Former naval officer and son of Thomas Gibson Bowles.

¹⁴¹ House of Commons, *Naval Conference*, p.670.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ *The Recovery Case (Webb, Master)*. 6C Rob 341/165 English Law Report 955. Admiralty Court 1807, p.958.

¹⁴⁵ House of Commons, *Naval Conference*, p.671.

memorandum to the Cabinet that outlined the key points of the Declaration from the viewpoint of both belligerent and neutral.¹⁴⁶ Grey noted that in Gibson Bowles' book, which he cited as a chief source of criticism of the Declaration of London, a return to the Napoleonic era was called for. In those days, as much economic gain was achieved through unfettered pressure on neutral states as it was on the belligerents. Grey then rightly pointed out the folly of Gibson Bowles' argument by stating that the position of neutrals had changed vastly since that time and the 'bullying' of neutral states such as the US could simply not be achieved any more.

At around the same time as Grey produced his memorandum to the Cabinet, Reginald McKenna received a note from Charles Ottley, the Director of Naval Intelligence with details of a paper prepared by Maurice Hankey.¹⁴⁷ This paper was typical of Hankey in that he had produced it independently through personal conviction and was sufficiently well respected to have it passed up the chain of command. Hankey's paper took a military approach to the implications of blockade contained within the Declaration and the effect that these would have on any future economic warfare plans against Germany. A plan proposed by Hankey would place a blockade on the entire North Sea coast of Germany, stopping and searching all neutral shipping in the Kattegat Straits between Denmark and Sweden. Hankey quoted a study from 1909, which concluded that in a war with Germany, the British Fleet should not conduct operations in the Baltic. Hankey's plan would certainly have been restricted by the Declaration of London, but more fundamentally, it was in violation of the Declaration of Paris in that the entire enemy coast could not be blockaded. Hankey's other suggestion (not without undertones of Jackie Fisher) was that the German Navy should also be disabled in a pre-emptive strike should war break out. Hankey saw that the Declaration of London had greater advantages to Britain as a belligerent than as a neutral. As Ottley noted however, Hankey's rejection of the

¹⁴⁶ E Grey, CAB 37/105/6 *The Declaration of London from the Point of View of (A) the Belligerent Rights of Great Britain; and (B) its Effects on Neutral Shipping and Commerce*. (London, Foreign Office, 1911).

¹⁴⁷ C Ottley, CAB 17/87 *Ottley to McKenna* (1911).

Declaration based on this particular plan had failed to weigh up some of the other political and international difficulties that might have caused the plan to fail. The likely resistance from neutral vessels in the Kattegat to forced boarding and search would have been one such issue.

Hankey was not the only one within Government circles to comment on the Declaration of London; the leader of the British delegation to the London Naval Conference, Lord Desart saw fit to respond personally to the debate in the House of Lords and the concerns of the press.¹⁴⁸ Desart saw that the two most public concerns were the value of the exclusion of foodstuff as absolute contraband and the effect of conditional contraband provisions on food supply, and the increased likelihood of destruction of neutral vessels. He cited two of Lord Stowell's decisions, in which it was recognised that in some circumstances food going to an enemy's country without special Government or military destination might be treated as contraband. Although food was not in reality treated as contraband, there existed no distinction between conditional and absolute contraband. The claim therefore that prior to the Declaration of London, food could not be declared lawful contraband was false. Austria, Russia, Japan and France were amongst the other countries that considered and indeed had, treated food as contraband. Desart partially rebutted Grey's argument for powerful neutrals preventing interference with trade as cited earlier, by pointing out that countries such as The Netherlands, Norway and Argentina, which had large fleets of merchant vessels did not possess great naval forces. The likelihood therefore that any commercially powerful neutral would force a belligerent to change its view on contraband foodstuff would be low. Although Desart made a valid point, he did not take account of neutral alliances e.g. US naval power¹⁴⁹ and Dutch shipping. The political consequences of the unlikely resort to war for continued breaches of neutral rights would ensure that a neutral simply accepted any minor acts committed

¹⁴⁸ Desart, *CAB 37/106/51 Declaration of London* (London, 1911).

¹⁴⁹ The US was a powerful neutral, possessing strong naval forces but a comparatively small merchant marine.

against its shipping. Given the attitudes of major naval powers prior to the Declaration of London, it seemed certain that any objections to issues of foodstuffs as conditional or absolute contraband would have become academic in the event of hostilities since these nations would revert to their former practice of declaring all food to be enemy food. With the advent of the First World War as the first conflict between the economies of entire nations (rather than just opposing military forces), this potential abandonment of international law was to become all too real for those involved, as later chapters will show.

Substantial defence of the Declaration of London in Parliament was reserved until June 1911, with the second debate of the Naval Prize Bill. It was then that the First Lord of the Admiralty, McKenna, turned to defend the Bill. The key issue in the House appeared to be the topic of belligerent rights. McKenna emphasised that the International Prize Court could only deal with the claims of a neutral nation against the actions of a belligerent. Any disputes between belligerents were a matter of wartime operations, quite unaffected by the Declaration. The sinking of neutrals would certainly upset neutral nations and make them consider their options for continued neutrality or becoming belligerents, but since British vessels conducted approximately ninety per cent of Britain's trade, the loss of neutral vessels would have had a minimal effect. The adoption of an International Prize Court would in fact mean that there would be an independent venue for British appeals. Previously, these appeals could only be heard in the Court of the belligerent nation with which Britain was in disagreement. McKenna believed that the Naval Prize Bill actually improved Britain's situation, rather than worsened it. In time of war, British shipping would be classified by law as vessels of a belligerent nation and therefore not able to take advantage of the rights accorded to neutral vessels, relying instead on protection from the Royal Navy. As events transpired, the question of Britain's status as a neutral proved irrelevant with the outbreak of war. The Declaration of London did however bring a degree of clarity to some hitherto murky areas of international maritime law.

Naval 'Objections'

Given that this issue was one of such naval importance, John Butcher¹⁵⁰ asked in the House of Commons whether the Navy Board gave its support to the ratification of the Declaration. McKenna declared that he had the support of four (perhaps five) sometime Directors of Naval Intelligence and two former First Sea Lords (Fisher and Wilson), with the rest of the Navy in support. Lord Charles Beresford,¹⁵¹ who defended the position of naval officers, quite rightly contested in the House the claim that the Royal Navy supported ratification. Beresford noted that during Wilson's tenure as First Sea Lord, Wilson had commented on the inadequate protection of the trade routes and following these comments, was sent to command the Fleet in the East Indies. McKenna of course refuted this implied accusation of punishment or a *de facto* gagging. Beresford's point was that any naval officer would not and indeed should not be criticising the actions of their superiors and would therefore not object to ratification of the Declaration. The support of the Royal Navy as claimed was therefore one of non-rejection rather than open support. In making this point, Beresford knew he could be proved neither right nor wrong for the very reasons that he had outlined. This particular debate also provided the staunchly Conservative Beresford with another opportunity to berate the Liberal Government.

Beresford's exception to the claim of non-rejection or tacit acceptance by naval officers was a memorandum he circulated to the House containing the signatures of one hundred and twenty Admirals who rejected the Declaration. On further analysis though, the majority of Admirals were retired and therefore had no reason to silence their opinions. The list was further reduced to just eleven reliable and experienced officers who had indeed held Flag rank, by eliminating all those who had either been promoted to Admiral on retirement as a Commander or Captain and those who had never actually been

¹⁵⁰ John George Butcher. Conservative MP for York.

¹⁵¹ Beresford, Admiral Sir Charles William de la Poer [1846-1919]. Conservative MP, 1874-80, 1885-9, 1897-1900, 1902, 1910-16. Commander-in-Chief, Mediterranean, 1905-7; Channel, 1907-9.

employed as an Admiral. On 4 June 1911, the House committed the Naval Prize Bill to a Standing Committee by 301 ayes to 231 noes.

The final issue that helped to decide the fate of the Naval Prize Bill resulted from deliberations of the Standing Committee.¹⁵² On 3 November 1911, the Commons voted against the proposal to reduce the number of 'minor power' judges on the International Court from seven to three i.e. the total number of judges from fifteen to eleven, by 151 noes to 81 ayes. In the course of this debate, the nationality of the judges was discussed; the eventual make-up of the Court would be on a roster basis with judges being drawn from the traditional great maritime powers and a number of other minor ones. The Naval Prize Bill gave details of the exact composition. Members of the House of Lords in particular¹⁵³ took what could be viewed as inherently racist umbrage that a judge from a tiny 'corybantic'¹⁵⁴ island such as Haiti could hold an equal position to a judge from a great and traditional maritime power such as Britain. The missed point here is that the nationality of the judge could be different from that of the appointing country. In fact, several countries could appoint the same judge. With domestic legislation being necessary to ratify the Declaration of London and embody it in British law, all hope of this was lost when the House of Lords, influenced by contentions that were inconsistent and often contradictory, finally threw out the Naval Prize Bill.

Non-Ratification

For Articles of existing law, non-ratification had no practical effect. The new items contained within the Declaration of London did not have any legal status so none of the rules bound Britain legally. As the convener of the Naval Conference however, Britain's

¹⁵² *Report from the Standing Committee on the Naval Prize Bill with the Proceedings of the Committee* (London, HMSO, 1911).

¹⁵³ US Department of State, *Debates in the British Parliament 1911-1912 on the Declaration of London and the Naval Prize Bill* (Washington: Government Printing Office, 1919).

¹⁵⁴ Corybantic, meaning 'wildly excited' and presumably a reference to the traditional voodoo rituals, comes from reference to the priests of Cybele (a traditional 'Earth Goddess' worshipped since ancient times), whose rites were accompanied by music and wild dances.

actions regarding ratification were followed closely by other nations with the outcome that no other country would ratify the Declaration following its rejection by Britain. In spite of this, Britain adopted the Declaration of London as a code of usage, reasonably described as the common law of the sea. The Declaration of London therefore represented the latest state of international law at sea at the outbreak of the First World War in August 1914.

Ineffectiveness of the Declaration of London's Attempts to Standardise Contraband Rules

The result of the Declaration of London was nothing more than a compromise with items such as food, clothing and barbed wire being placed on the conditional list, whereas other items such as cotton, rubber, hides, metallic ores and soda were placed on the list of free (or non-contraband) items. At the outbreak of the First World War, Britain, France, Russia, Germany and Austria all issued lists of absolute and conditional contraband, almost identical to the lists agreed in the Declaration of London; on 20 August 1914, the Declaration of London was effectively put into force in Britain by Order in Council. The war very soon changed all this. August 1914 saw some concerned correspondence within the Foreign Office in view of the fact that:

Some pronouncement is necessary as to the rules which the naval officers are going to enforce as regards neutral ships and the property on board, and as regards neutral property on board enemy ships. Such a pronouncement is required for the guidance of our own Prize Courts and also for the information of neutral Governments and the trading community in neutral countries.¹⁵⁵

On 21 September 1914, Britain added copper, iron ore, lead, rubber, hides and other items to the list of conditional contraband. To add to the confusion, on 29 October 1914 a new Order in Council withdrew the Order of 20 August, and issued new lists. Additions to the new list of absolute contraband included raw metals, rubber and barbed wire. Germany of course protested to the neutral powers and started to make additions to its own list.¹⁵⁶ Frequent additions to the lists of absolute and conditional contraband on both sides culminated on 13 April 1916, when Britain issued a schedule containing some 169 items

¹⁵⁵ C J B Hurst, *ADM 116/1233 Memorandum regarding the Declaration of London* (Foreign Office, 1914).

¹⁵⁶ *Contraband and the War*, ed. by H. Reason Pyke, Oxford Pamphlets no 69, (Oxford: Oxford University Press, 1915), p.182.

but more importantly, it no longer made a distinction between absolute and conditional contraband:

The circumstances of the present war are so peculiar that His Majesty's Government consider that for practical purposes the distinction between the two classes of contraband has ceased to have any value. So large a proportion of the inhabitants of the enemy country are taking part, directly or indirectly, in the war that no real distinction can now be drawn between the armed forces and the civilian population. Similarly, the enemy Government has taken control, by a series of decrees and orders, of practically all the articles in the list of conditional contraband, so that they are now available for Government use. So long as these exceptional conditions continue, our belligerent rights with respect to the two kinds of contraband are the same, and our treatment of them must be identical.¹⁵⁷

On the same subject, an editorial comment in the *American Journal of International Law* noted,

The time-honoured distinction drawn between the two classes [of contraband] is more specious than real, for at the present day articles useful to the army or navy may, if landed at an ordinary port, be easily and speedily transported by railroads to the army and navy.¹⁵⁸

This view appeared to be entirely sensible, given that in this war of economy versus economy, the entire infrastructure of each side was mobilised to support the war effort.

On 7 July 1916, in a move precipitated by the outcome of the *Zamora* appeal (discussed in chapter six), Britain finally withdrew all Orders in Council relating to the Declaration of London, thus marking the effective end of the Declaration in its international application by Britain. An Appendix to the note to neutral countries that accompanied this Order in Council was a joint memorandum issued by the British and French Governments and set out to justify the change in policy:

As the present struggle developed, acquiring a range and character beyond all previous conceptions, it became clear that the attempt made at London in time of peace to determine not only the principles of law, but even the forms under which they were to be applied had not produced a wholly satisfactory result... The rules laid down in the Declaration of London could not stand the strain imposed by the test of rapidly changing conditions and tendencies which could not have been foreseen. The Allied Governments were forced to recognise the situation thus created, and to adapt the rules of the Declaration from time to time to meet these changing conditions. These successive modifications may perhaps expose the purpose of the Allies to misconstruction; they have therefore come to the conclusion that they must confine themselves simply to applying the historic and admitted rules of the Law of Nations.¹⁵⁹

¹⁵⁷ International Law Committee, *FO 800/920/11472 The Freedom of the Seas* (London, 1918), p.12.

¹⁵⁸ Editorial Comment, 'Contraband of War', *The American Journal of International Law*, 9, no. 1 (January 1915), pp.210-220.

¹⁵⁹ Foreign Office, *Miscellaneous No 22. Appended to the Note Addressed by His Majesty's Government to Neutral Representatives in London on 7 July 1916* (Parliamentary Papers, 1916).

2. To what extent did Britain make plans for economic warfare against Germany prior to the First World War? **The Manchester War Crimes Tribunal**

The previous chapter investigated the progress of international law from antiquity through to a few years before the outbreak of the First World War. One of the important issues to emerge in the early part of the war was Britain's decision to implement, almost from the outset, an economic blockade of Germany. Germany justified the actions of its U-boat force as direct retaliation to the economic blockade instigated by Britain. But what might have happened if Germany's campaign had been successful and Britain had capitulated, as early as 1917, as a result of the U-boats' unrestricted warfare? This chapter investigates the evidence available to Germany to be able to prove that the British economic warfare plans and the British 'hunger blockade' were war crimes. Offer noted in his chapter on 'Fear of Famine in British War Plans'¹⁶⁰ that historians had largely ignored the plans for economic warfare prepared by Britain before the war. He briefly referred to the Official History of the blockade and the memoirs of Hankey but concluded that 'despite the revelations of Bell and Hankey, subsequent historians have not taken the story up'. This gap in the academic literature and the extent of Britain's pre-war economic warfare plans have therefore been investigated in order to provide evidence for a counterfactual history, the Manchester War Crimes Tribunal, in an attempt to continue the line of investigation first raised by Offer. Apart from the scenario, all the evidence presented is real.

Counterfactual history provides an alternative means of exploring historical events based on an outcome that did not actually occur, in this case, a German victory. Although often dismissed as just entertainment, the use of counterfactual history in this case provides

¹⁶⁰ Offer, *The First World War*, ch.15.

the opportunity to review the subject of British economic warfare plans from an original viewpoint.¹⁶¹

Economic Blockade

Before looking at the Tribunal and the evidence that might have been available, it is worth taking a detailed look at the subject of blockade itself. In any campaign of war, whilst the military war fighting considerations usually receive the greatest publicity, other factors can be equally important; in modern military thought, the key factors are diplomatic, information, military and economic. As can be seen throughout this thesis, diplomacy, especially as practiced by Woodrow Wilson was instrumental to America's decisive role throughout the war. Likewise, information, more commonly recorded as propaganda, played a vital part in the war being directed by the press and government alike. During the First World War, economic considerations came to the fore and at the heart of any plans for economic warfare waged at sea is the concept of blockade. A modern definition of a blockade is:

An operation intended to disrupt the enemy's economy by preventing ships of all nations from entering or leaving specified coastal areas under the occupation and control of the enemy. Blockade is an act of war and the right to establish it is granted to belligerents under the traditional laws of war. This law requires, inter alia, that the blockade must be effective, that it is to be declared by the belligerent so that all interested parties know of its existence and that it is confined to ports or coasts occupied by the enemy.¹⁶²

Further definitions are also available for a 'close blockade', a blockade that denies an enemy access to or from his ports, and a 'distant blockade', a blockade that denies the enemy passage through a sea area that all ships must pass in order to reach the enemy's territory. The blockade has therefore become part of the vocabulary of modern warfare planners and in the early twentieth century, the economic blockade was equally to the fore of naval considerations. Corbett defined a blockade from both naval and commercial

¹⁶¹ Niall Ferguson explores the use of counterfactual history further in Niall Ferguson (ed), *Virtual History: Alternatives and Counterfactuals* (New York: Basic Books, 1999) and the use and theory of counterfactual history is considered in Johannes Bulhof, What If? Modality and History, *History and Theory*, 38, no.2 (May 1999), pp.145-168.

¹⁶² Naval Staff Directorate, *BR 1806 British Maritime Doctrine Second Edition* (London: The Stationery Office, 1999).

aspects. He regarded a naval blockade as 'to prevent an enemy's armed force leaving port, or to make certain it shall be brought to action before it can carry out the ulterior purpose for which it put to sea.' Corbett also defined a commercial blockade as:

Essentially a method of exercising command, and is mainly an affair of cruisers. Its immediate object is to stop the flow of the enemy's sea-borne trade, whether carried in his own or neutral bottoms, by denying him the use of trade communications.¹⁶³

A naval blockade, with the blockading force maintaining a tactical advantage through its use of greater sea room and the ability to manoeuvre freely, was the time-honoured view of blockade. It could potentially lead to the 'decisive fleet action' in which one side would emerge as the victor and gain complete control of the sea. By contrast, the commercial blockade provided a much more protracted approach to warfare as Corbett rightly stated: 'In the long run a rigorous and uninterrupted blockade is almost sure to exhaust him before it exhausts us, but the end will be far and costly.'¹⁶⁴ A commercial blockade was not a quick solution when considering how to defeat the enemy. In Edwardian Britain, the preferred method of defeating an enemy was therefore to make use of Britain's superior maritime forces by means of the naval blockade but as the remainder of this chapter shows, the rise of Germany as an economic rival to Britain forced a review of this approach.

The Manchester War Crimes Tribunal

The Manchester War Crimes Tribunal held its first session in 1921. The stated aim of this Tribunal was to investigate the extent to which Britain had pre-meditated the hunger blockade against the people of Germany, in an attempt to starve them into submission in the event of a war. This investigation was a direct result of the War Guilt clause in the 1917 Treaty of Hamburg,¹⁶⁵ where Germany squarely placed the blame for economic

¹⁶³ JS Corbett, *Some Principles of Maritime Strategy* (London: Longmans, Green and Co, 1911), p.164.

¹⁶⁴ *Ibid.*, p.166.

¹⁶⁵ The 1917 Treaty of Hamburg was signed following Germany's U-boat offensive in the spring of 1917 when British grain stocks were depleted to such an extent that rioting broke out across the United Kingdom, causing the Government to sue for peace.

deprivation during the First World War with Britain and her allies. The remainder of this chapter comprises evidence used to support the Tribunal's findings starting with the prosecution, then the defence, and finally a summing up of the perceived legality of Britain's actions.

The Case for the Prosecution: British Opposition to German Naval Expansion

Germany's first contention was that Britain opposed Germany's economic expansion, and with it, the naval expansion masterminded by Tirpitz. Fisher, who served as the First Sea Lord from October 1904 to January 1910, led British opposition to this naval expansion. Amongst the many changes and reforms that he made, the introduction of HMS *Dreadnought* in 1905 is probably his most celebrated. This new class of battleship marked a quantum change in the naval arms race as it rendered obsolete the current classes of battleship in service. This British change in capital ship type gave Tirpitz the justification he needed to modify Germany's Naval Laws over the years in order to introduce German Dreadnoughts to keep up with Britain. The rest of the world had also noticed Germany's naval expansion. In 1902, Britain began to engage in a series of international agreements, starting with Japan. More importantly, on 8 April 1904, Britain concluded the negotiations for the Entente Cordiale¹⁶⁶ with its old rival France. This agreement was really nothing more complicated than a way for France and Britain to control their management of Egypt and Morocco. It certainly did not entail any military agreement or formal mutual defence pact between the two countries over the effect of a direct attack on either country. Notwithstanding the non-military nature of this agreement, McKenna¹⁶⁷ noted that various 'staff conversations' had taken place from 1906 onwards to discuss possible military options in the event of a Continental war. The resultant Anglo-French naval agreement of 1912 allocated responsibility for the security of the

¹⁶⁶ Cmd 5969 Volume CIII, *Declaration between the United Kingdom and France Respecting Egypt and Morocco, Together with the Secret Articles Signed at the Same Time* (London, 1911).

¹⁶⁷ Stephen McKenna, *Reginald McKenna 1863-1943 - A Memoir* (London: Eyre & Spottiswood, 1948), p.106.

Mediterranean Sea to France, allowing Britain to withdraw its warships to home waters to concentrate not only on the growing threat from Germany, but also to provide security to the northern coast of France. As early as 1901 however, Britain had begun to concentrate forces in home waters. This was partially due in part to a feud between Fisher and Rear Admiral Custance,¹⁶⁸ then Director of Naval Intelligence. Fisher, who at the time commanded the Mediterranean Fleet, had argued for the addition of more destroyers to his command. Custance knew that Fisher was exaggerating the threat in the Mediterranean in order to meet his own ambitions, and used the German navy as a counter-argument for keeping forces at home. Although concentration of the Fleet in home waters was considered premature given the embryonic threat from Germany, this rapidly became policy when Fisher returned to the Admiralty in late 1904. This clash with Fisher ensured that Custance's rise in Admiralty circles was swiftly curtailed.

In a 1901 memorandum entitled 'Food Supply in time of War',¹⁶⁹ Custance discussed war with France and Russia. The principal factors cited as threats to food supply were: 'the source from which it (food supply) comes, the protection which can be afforded by the navy, the attitude of neutral nations.'¹⁷⁰ This attitude of neutral nations would play a very important part in the politics of the belligerent powers during the First World War. The argument in Custance's memorandum could have been applied equally to any other enemy such as Germany, as the trade routes for British supply were not going to change, only the perception of where the threat was actually coming from. Any legitimate naval expansion by Germany could therefore be seen as a threat to the integrity of British trade routes.

The principal suppliers for Britain's corn and meat imports at the time were the US (from both the Atlantic and Pacific coasts), Argentina, Australasia, Canada, India and Russia from the Black Sea. Custance's report considered the most likely routes for

¹⁶⁸ Custance, Sir Reginald Neville (1847–1935) Custance was a student of strategy, and used his position to promote the study of history as the basis for the development of modern doctrine. He also established the defence and trade divisions of the department.

¹⁶⁹ Admiralty, *ADM 137/2749 Food Supply in Time of War* (1901).

¹⁷⁰ *Ibid.*

commercial vessels from these countries, examined the points at which they would be vulnerable, and assessed the naval support that would be required in order to protect the shipping. His conclusion at the time was that as long as Britain's maritime forces did not suffer a major defeat of the magnitude of Salamis, Actium, Lepanto or even Trafalgar, then the enemy would not have been able to affect British trade. Of course the report then concluded by saying that the only safeguard against such a defeat was to 'steadily add to our number of battle-ships and destroyers, with a view to increasing our present narrow margin of strength.' At the time, that narrow margin was still based on the 'two power' standard whereby the Royal Navy aimed to be at least as powerful as the two next largest navies combined. This may have made the margin sound slightly less 'narrow' but in the event of an alliance by enemy states, any existing margin of naval superiority had the potential to prove itself absolutely vital to the survival of Britain's numerical advantage at sea.

The Case for the Prosecution: Germany – Britain's Enemy

Although British military planners in the early 1900s initially concerned themselves with a war against the Franco-Russian alliance, thoughts were rapidly turning towards Germany.¹⁷¹ A number of CID conferences took place at Whitehall Gardens in December 1905 and January 1906.¹⁷² In attendance were Lord Esher, Lieutenant General Sir John French,¹⁷³ Captain Ottley and Sir George S. Clarke.¹⁷⁴ These secret conferences were significant from a strategic point of view as they included representatives from both the navy and the army, at a time when naval and military plans were two entirely independent and unrelated areas. Such was the beauty and radical nature of the CID's role that it was

¹⁷¹ Germany had been a recent critic of Britain during the Boer War; Britain felt the need to solidify its international agreements, the first major one being the Anglo-Japanese alliance, signed on 30 January 1902.

¹⁷² Committee of Imperial Defence, *CAB 38/11/4 Notes of Conferences on 19 December 1905, 6 January 1906, 12 January 1906 and 19 January 1906* (London, 1906).

¹⁷³ French, John Denton Pinkstone, first earl of Ypres (1852–1925). French later went on to command the British Expeditionary Force at the start of the First World War.

¹⁷⁴ Clarke, George Sydenham, Baron Sydenham of Combe (1848–1933). Like Esher, Clarke was one of the reformers of the War Office. He was the first secretary of the CID.

able to bring together these disparate bodies in a single forum; in this respect, the CID was ahead of the times. War with Germany was discussed in detail along with the various types of responses available including: naval action, combined naval and military action, and military action alone. Under the heading of naval action, two considerations were 'Capture of German commerce at sea' and 'Commercial blockade of German ports'. It is likely that these items were raised as a direct result of two papers produced in 1903, which investigated 'The Military Resources of Germany, and Probable Method of their Employment in a War between Germany and England' and the 'Military Policy to be adopted in a War with Germany'.¹⁷⁵ The first of these papers was presented on 7 February 1903 by Lieutenant Colonel William Robertson,¹⁷⁶ Assistant Quartermaster General and head of the foreign intelligence section of the War Office, the second, on 10 February 1903 by EA Altham, also from the Assistant Quartermaster General's office. With both papers produced in the year leading up to the signing of the Entente Cordiale, it is likely that with France as a friendly neighbour, analysis of the next most significant threat had begun in earnest. This potential threat quite clearly came from Germany. Regarding German war aims, Robertson's paper stated:

Germany's chief aim in a war with England seems to be evident enough. She could not hope to be successful at sea, except locally and for a limited time, and consequently her best, if not only, chance of bringing the contest to a favourable conclusion would be to strike a blow at the heart of the British Empire before the British Navy could exert its full strength and throw her upon the defensive, blockade her fleet, destroy her mercantile fleet, and render her huge army useless.¹⁷⁷

The expectation from this comment would therefore have been that Germany would conduct a short but decisive campaign against Britain in a war measured in days and weeks rather than in months and years, i.e. a short-war. Robertson's report continued by elaborating on the actual 'blow' envisaged against Britain. The rather lengthy citation

¹⁷⁵ Committee of Imperial Defence, *CAB 38/4 No 9 I. The Military Resources of Germany, and Probable Method of their Employment in a War between Germany and England. II Memorandum on the Military Policy to be adopted in a War with Germany* (London, Secretary of State for War, 1903).

¹⁷⁶ Robertson, Sir William Robert, first baronet (1860–1933). As Chief of the Imperial General Staff 1915–1918, Robertson was an advocate of wearing down the enemy with artillery assaults and small advances; the single strategic assault of the Somme was an approach that appalled him. See David R Woodward, *Field Marshall Sir William Robertson, Chief of the Imperial General Staff in the Great War* (Westport, Conn: Praeger, 1998).

¹⁷⁷ Committee of Imperial Defence, *CAB 38/4*.

below spells out in great detail the British expectations should Germany attack. This was significant because it reinforced the British belief that Germany was a serious threat and in order to provide an effective foil to Germany plans, strong moves were required:

In considering the possibility of striking this blow, the German authorities would probably argue that England nearly always under-estimates the strength of her opponent, and so suffers reverses at the outset, which take an appreciable time to retrieve. This, they would argue, might happen in a naval war, as it has often done in land operations, and so allow Germany not only to acquire local supremacy at sea, but to retain it for a sufficient length of time to admit of a force of 150,000 to 300,000 men being thrown across the North Sea upon the British eastern coast. The fact would not be overlooked that over-sea invasions are very difficult enterprises under any circumstance; that the adversary is bound to receive warning, since he cannot be kept wholly in ignorance of the preliminary preparations; and that, even if the sea were crossed in safety, a force invading England would eventually find its communications severed. The difficulties mentioned can, however, be largely overcome by careful forethought, and in this respect the highly efficient German staff may be relied upon to do everything possible; while, as regards the severance of communications, it would not unlikely be held that the invading force, once landed, could live upon the country and maintain itself unsupported for several weeks. In the meantime it would be hoped that the moral effect produced on the densely-crowded and wealthy population of England, and the shock given to British credit, might lead, if not to complete submission, at least to a Treaty by which England would become a German satellite. Even if the plan failed and the invading force were destroyed, the military strength of the German Empire would be but slightly diminished.¹⁷⁸

It is likely that sound military intelligence formed the basis of this paper, but it also seemed to reflect public anxieties regarding the threat of invasion; this may well have been a deliberate move in order to emphasise the threat to a non-military reader. It did intimate that a strong naval presence was required in order to counter this threat of invasion and that Germany should not be under-estimated. It may seem obvious not to underestimate a potential adversary and indeed, the well-established military principle of 'knowing one's enemy' was long recognised. The notion of a strong British naval force able to interdict any German invasion force also lent weight to the idea of a blockade albeit a naval blockade rather than a purely commercial one as defined by Corbett earlier in this chapter.

The military policy discussed in the second part of the report started with the memorable analogy that war between Germany and Britain would:

In some ways resemble a struggle between an elephant and a whale, in which each, although supreme in its own element, would find difficulty in bringing its strength to bear on its antagonist.¹⁷⁹

From this introduction, there followed a discussion of the measures required by Britain in order to defend against a German invasion force. The memorandum noted the

¹⁷⁸ Ibid.

¹⁷⁹ Committee of Imperial Defence, *CAB 38/4*.

impossibility of the hypothesis that Britain should neglect to protect the North Sea or be temporarily shut out by a German fleet holding the Straits of Dover. Notwithstanding this and despite the Entente Cordiale, the likelihood of a successful German invasion would have increased dramatically if Britain became engaged in a war with France and Russia. The conclusion of the discussion on defences agreed that a strong home force was necessary but 'we aim at, and hope to attain, sea command.' Inherent in maintaining command of the sea would be control of enemy trade.

Following on from defence, the report then looked at military options against Germany. In considering the relative sizes¹⁸⁰ of the standing armies of Britain (120,000) and Germany (300,000),¹⁸¹ Robertson acknowledged that offensive action on German soil would have been 'madness'. The two options proposed were the destruction of German sea-borne trade and/or the seizure of her Colonies and Helgoland. Seizure of the Colonies was soon discarded as an option:

First because they are at present of such small value that their loss would have but little effect upon the final issue of the war; secondly, if Germany were, single-handed to engage us, the dispatch of troops across the sea would hardly be possible.... It follows, therefore, that at present the German Colonies are a comparatively unimportant factor in the problem.¹⁸²

It was therefore clear, even in the early days of considering Germany as a potential adversary, that some form of economic action would be necessary. The destruction of German commerce was seen to be 'the only weapon with which we can hope to induce the enemy to sue for peace on terms advantageous to our interests.'¹⁸³ This did however raise expectations of a long and drawn-out war, rather than a brief and decisive one. With the total value of German sea-borne trade being valued at £542 million in 1901 according to Robertson's report, making it the second largest in the world, it was clear that a loss of this trade would represent a serious blow to the German economy.

¹⁸⁰ Ibid.

¹⁸¹ Strachan placed the size of the German army at 800,675 men, rising to 2,100,000 on mobilisation in 1914. Germany's potential for manpower was huge. Reservists were also noted as raising the strength of regular battalions from 663 to 1,090 men with an additional fourteen and a half reservist corps compared to the active twenty-five corps. The remaining 'territorial' forces in Germany, the Landwehr, Landsturm and Ersatz, although less well equipped, still numbered another 1,700,000 men. Strachan, *To Arms*, p.174.

¹⁸² Committee of Imperial Defence, *CAB 38/4*.

¹⁸³ Ibid.

The Case for the Prosecution: Planned Effects of a British Blockade on German Trade

A more comprehensive study on the effects of war on Germany's economy was contained within a 1908 Admiralty memorandum.¹⁸⁴ This report has been examined in detail as it gave a good indication of the basis on which economic warfare was planned and it is worthy of particular note that it only considered the effects of the cessation of German, not neutral, shipping. The report concentrated on supplies of food and materials but did not specify which of these might be strategic wartime supplies although again it is worth noting that figures for items such as precious metals and nitrates (essential for the manufacturing of explosives) were included. The report opened by examining the population increase in Germany and the employment figures within different industries:

The approximate rate of increase in the German Empire at the present moment [1908] is 1,000,000 a-year, and if this is translated into money, by estimating the cost to the country of keeping 1,000,000 extra souls every year, it will be evident that some means must be found to increase *pro rata* the productiveness of the country. It was not capable of any great increase by means of agriculture, and the country was therefore obliged to launch out into industrial undertakings in order to find the necessary income to support its increasing population.

Having thus been forced to become industrial, it followed very soon that the products of the country itself became insufficient for its needs, and at the present moment she is largely dependent on the sea. Two-thirds of her total trade is oversea, [sic] and in some respects she is entirely dependent on countries separated from her by the sea for the raw materials with which to carry on her manufactures.¹⁸⁵

A very high proportion of Germany's trade therefore relied on the sea for its safe passage. The report did not give a breakdown of the overland trade but it is assumed that at least some of this trade would have arrived at neutral countries by sea, prior to overland transport to Germany. The total for the import and export of precious metals was counted separately.

Table 2: Breakdown of German Global Trade in 1908¹⁸⁶

Area	£	%
Europe	509,580,000	63
Asia	54,786,350	7
Africa	21,985,450	3
US	177,156,850	22
Australasia	15,386,250	2
Total	804,209,900	
<i>Precious metals</i>	<i>25,315,000</i>	<i>3</i>

¹⁸⁴ Committee of Imperial Defence, *CAB 16/5 The Economic Effect of War on German Trade (CID Paper E-4) Appendix V*, (London, 1908).

¹⁸⁵ *Ibid.*, pp.20-21.

¹⁸⁶ *Ibid.*, p.21.

The next part of the report¹⁸⁷ made interesting reading, as it went on to analyse cargoes of raw materials as shown in the table below.

Table 3: Percentage of Commodities Imported by Germany in 1908¹⁸⁸

Material	% Imported
Wheat	50
Cereals (wheat, barley, rye, maize)	25
Iron	20-25
Copper	14
Tin	>50
Lead	33
Cotton	100
Hemp	100
Wool	>60

When analysing these figures, the report opened up an interesting question on trading with the enemy. The report assumed that much German trade would continue through neutral ports and that British vessels would be responsible for supplying much of that trade.

A large amount of this finds its way to Germany under the German flag, and this would be stopped in war, but the remainder which is carried in ships flying other flags would continue as before, except that it would have to go through Holland and Belgium instead of going direct to the North German ports. The trade in ships under the British flag would probably continue, as it will be shipped to Dutch and Belgian account, and would not appear as trading with the enemy. The rise in freights would undoubtedly attract large numbers of British ships to engage in this trade.¹⁸⁹

It seems at first look that the Admiralty was almost supplying a 'get-out' clause, enabling British shipping agents to continue trading whilst circumventing any accusations of trading with the enemy. An increase in British trade with the neutral ports on behalf of Germany would of course have been counterproductive to any interdiction of German shipping. The scheme for National Indemnity put forward by the Naval Intelligence Department however limited the payment of indemnity to vessels trading with neutral ports in close proximity to the enemy's coasts, helping to deter British shipping from continuing the enemy's trade. In 1906, the German Empire accounted for 11.3% of the world's steam shipping; the British Empire and the rest of the world made up the remaining 56% and 32.7% respectively. These figures show that the British shipping trade was a serious force

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

and severe measures such as the National Indemnity scheme were required in order to make it co-operate with Government policy.

With the gradual shift in the German economy from agriculture to industry, the effect of any shortages of food and materials following a mobilisation for war was bound to be more acute. In the agricultural economy, women and children could replace the men in the fields and largely live off the land. In the industrial economy, the labour from factories could not be replaced quite as easily with female and child labour and with the working members of the family mobilised, the main source of income would be gone. For every one million male inhabitants mobilised, the CID figures¹⁹⁰ estimated that over two million others would be affected. This was broken down by occupation, of which industrial occupations, agriculture, and fishery made up over half the number. The need to obtain raw materials and food would therefore have become acute and a greater strain would be placed on overland supply routes. The railway system would already be busy coping with the extra work required to mobilise troops so the possibilities for increased carriage of cargo by rail would be limited. The CID report also calculated that following the closure of German ports, some 42,000,000 tons deadweight needed to be transferred to Dutch and Belgian ports, which normally dealt with just 22,000,000 tons of German trade.¹⁹¹ The resulting strain on the infrastructure of both Germany and its trading partners would therefore be enormous.

Whilst highlighted as a strength in the CID report, Britain's reliance on seaborne trade could, with the benefit of hindsight, be considered as a huge vulnerability. This continued to add credence to the British view that a strong naval force was required. The tone of the report also assumed absolute British supremacy at sea:

The cases of Great Britain and Germany are not dissimilar as regards their wealth-producing sources. This country is practically dependent on industrial production, and so to a very great extent is Germany. This condition implies a necessity for raw material, consequently a dependence on the sea. Our need for oversea [sic] supplies may be greater, but our power to obtain these supplies is also greater, due to our superior geographical position.... Two great sources of income neutralise the

¹⁹⁰ Ibid., p.24.

¹⁹¹ Ibid.

excess of imports over exports, viz., foreign investments and shipping. The former should be a source of strength in war time, for it means a source of supply only indirectly affected by the fact that this country is at war. Our shipping prospects will be directly dependent on the success attending our efforts to keep command of the sea. Germany has not the foreign investments that this country holds; moreover her shipping should be forced to inactivity, if not largely destroyed.¹⁹²

The final areas reviewed in this report were retail prices and insurance. German retail prices on the outbreak of war were expected to rise due to the twin effects of reduced supply and greatly increased demand on the remaining stocks. Regarding insurance, Britain insured either directly or indirectly, the majority of the world's businesses. Great portions of Germany's most valuable risks were insured in London and this was a weakness of the German position. The moment war with Britain commenced, all policies associated with these risks would become void:

Insurances of enemy property and against the risk of British capture are also void, as being opposed to the national war policy.... The illegality of insurances to protect trade with the enemy was definitely decided in *Potts vs Bell*.¹⁹³

Thus, the insurance policies on most German merchant vessels would become void on the outbreak of war and the German mercantile marine would cease to be covered by any form of insurance against loss, a restriction that would effectively destroy any hope of commerce being carried out under the German flag. In order to avoid heavy losses however, Germany had the potential to transfer its ships to neutral flags. Although intended as a short-war measure at the time, destruction of German sea-borne trade was a direct economic policy better suited to the longer war required for an economic blockade to be effective. As an embryonic economic policy however, this 1904 report showed that for a period starting some ten years before the war, consideration was given to economic action in some form against Germany. Despite the ongoing arms race, it was clear from those early attempts at formulation of a winning plan that the most feasible strategy against Germany was economic blockade and with that came the implication of conducting a long-

¹⁹² Ibid., p.25.

¹⁹³ Ibid., p.27. The case of *Potts vs Bell* (8 Taxation Reports 548) in 1800 provided the precedent and principles for abrogation of marine insurance in cases of trading with the enemy for many years. In time of war, the ruling prevented British goods being insured by an enemy nation against losses occurring as a result of British action. To do so was considered as trading with the enemy.

war. The near-universal expectation, however, was that any major war between industrial powers would be short and decisive.

The Case for the Prosecution: Initial British Naval and Military Planning Against Germany

Having established a perceived threat from German naval and economic expansion, Britain began to consider how to set about reducing this threat militarily. In August 1911, the CID met to consider some of the actions required in the event of a European war.¹⁹⁴ One of the primary considerations for the Army was the protection of troops during the landing of the British Expeditionary Force. During this meeting, the First Sea Lord stated that the Navy could not be counted on specifically to protect the required transports due to the mobilisation of the Fleet to confine the German Fleet. This was understandably a cause for much consternation amongst the Army representatives. Despite what had been reported earlier about the folly of offensive action on German soil, the naval plans developed at the time envisaged a large naval force operating in the North Sea, allowing a close blockade of the Elbe, Weser and Jade, to support amphibious assaults on the German coast. The development of these plans started many years before in June 1905 when, despite the existence of the Entente Cordiale, the orders included considerations for a war with Germany, a war with France, and a war with both. There was no credence at the time in an economic campaign, given that the greatest perceived threat to Britain was invasion by a Continental army. Books and speculation in the popular press could only have fuelled such public sentiment. The maintenance of maritime supremacy was a product of a naval blockade and this supremacy of the seas alone would prevent invasion by Germany (or until just previously, France). The orders given to the Commander-in-Chief of the Fleet did however give him autonomy of action. Under the arrangements for strategic planning

¹⁹⁴ Committee of Imperial Defence, *CAB 38/19/49 Minutes of the 114th Meeting, August 23, 1911* (London, 1911).

at the time, it was entirely up to the Commander-in-Chief and his staff to develop the plans and tactics to fulfil the orders of the Admiralty.

This situation of autonomy changed when the Admiralty founded a new War College at Portsmouth and assembled a committee for war plans; the President of the College was a member of this committee. Founded with the intention of educating staff officers in the scientific study of war and strategy, the War College trained staff officers to analyse the weak points of an enemy's forces. When the first war plans were introduced in July 1908, shortly after the War College opened in November 1906, economic blockade was still regarded as a means to force a quick decision by way of the *threat* it represented rather than its actual long-term consequences. The blockade of German trade by a cordon of cruisers in the North Sea was bait with which to attract the German High Seas Fleet into a decisive fleet action (or indeed any fleet action) and therefore dispensed with the need for a long-term blockade. In other words, the blockade would simply be the means to an end. This was a plan that had worked successfully during the wars with Holland in the seventeenth century when the Dutch fleet was lured out to defend the shipping that was being intercepted as it sailed up the English Channel. The notion that the German High Seas Fleet might be lured out into a decisive battle was an example of the desire to 'fight the last war', a mistake frequently made by military planners possessing a lack of forethought. No two wars have ever been the same and the tactics and strategy that may have been successful in one situation may turn out to be woefully inadequate in another. Such was the confident view held by many in Britain that only a short-war might be required, the possibility of a longer war and therefore new tactics was not considered necessary at the time.

Concurrent with development of the war plans, the Naval Intelligence Department began to consider the option of economic warfare and with it, the inherent possibility of a long-war. The principal effect of economic warfare was viewed initially to be increased costs for goods, since a naval blockade would require German imports to be brought in by

longer land routes. If indirect shipments to Germany could also be seized, the Naval Intelligence Department recorded it 'would doubtless inflict in the end considerable losses on Germany... But the effect would take time to produce, and if we were desirous of supporting France more rapid action might be necessary...'¹⁹⁵ In May 1908, Admiral Slade asked the Foreign Office to consider the effect on German foodstuffs and raw materials if overseas trade was to be curtailed. The Foreign Office in turn tasked the Consuls-General of Hamburg, Frankfurt and Antwerp to undertake the study. In the meantime, the Admiralty instigated a parallel study and in a letter to McKenna in 1908; Ottley used his influence as the former Director of Naval Intelligence to further this investigation:

The Prime Minister would be glad if the Admiralty would furnish a paper for the information of the Sub-Committee on 'further military needs' giving 'the financial and economic pressure that would result to Germany owing to the stoppage of her oversea trade if she were at war with Great Britain and France...

...The Intelligence Department have all the facts at their finger ends, the problem was constantly under investigation during the whole three years I was DNI, and Admiral Slade tells me he has given particular attention to it since he succeeded me. I do not know whether the Board have recently changed or modified the views held a year ago, but throughout the whole period I was DNI, the Admiralty claimed that the geographical position of this country and her preponderant sea power combine to give us a certain and simple means of strangling Germany at sea. They held that (in a protracted war) the mills of our sea-power would grind the German industrial population (slowly perhaps), would grind them 'exceeding small' – Grass would grow in the streets of Hamburg and widespread death and ruin would be inflicted.

If we are to see the tremendous problem on which the Sub-Committee are now engaged 'steadily and as a whole', I am sure you will agree that this aspect of it must not be forgotten!'¹⁹⁶

The language used by Ottley stated quite clearly the measures that he was prepared to support; even the metaphor of 'mills of our sea-power' referred to a direct effect on the German economy, albeit in conjunction with a long, drawn-out campaign i.e. the long-war.

By way of a counter to British blockade plans, Germany could show that it had not planned for a drawn-out war. For example, the German General Staff had long considered

¹⁹⁵ Naval Intelligence Department, *ADM 116/1043B* (1905).

¹⁹⁶ C Ottley, *MCKN 3/7 Letter from Charles Ottley to Reginald McKenna on 5 Dec 1908* (1908).

that a protracted war on two fronts could not be won and the Schlieffen Plan¹⁹⁷ was devised in order to bring quick victory in the west prior to the weight of German forces being directed against the slowly mobilising Tsarist Empire. In his study of the First World War, Herwig concluded 'Austria-Hungary and Germany set out in August 1914 to fight a short-war.'¹⁹⁸ As a strong Continental power, the advance of the German army needed to be decisive and France needed to be defeated before her allies had the opportunity to provide any assistance. Herwig continued to describe the mood of Europe:

This 'cult of the offensive' helped Europe's military convince the public to accept war in 1914 with the assurances that the conflict would be brief. Somewhere in Northern France or Galicia there would be a single, decisive battle, another Cannae or Sedan. Then all would return home to 'business as usual', as Churchill put it. This 'short-war illusion' dominated European capitals.¹⁹⁹

A shorter war was therefore preferable to Germany. Nevertheless, it was clear that Germany recognised the impact that any war would have on its economy, regardless of the method of warfare employed. In December 1906, Fisher related to Esher the contents of a note regarding German feelings about war with England. This note was the result of repeated conversations between a 'high English Official' and the 'highest official naval and mercantile personages in Germany':

Germany imports an enormous amount of food and is dependent on her shipping for this, and it is apparently realised that a war with England would be very disastrous to Germany, and that besides finding it difficult to feed her population she would lose the carrying trade she has spent so much to build up. The statements that have been made in the English parliament of England's wish to limit naval armaments are scoffed at; they only see in it her wish to limit others and Germany in particular...It was stated... that a financial crisis during the next two or three years is probable. There is no doubt that the Germans are making up to the Americans for financial reasons.²⁰⁰

The Admiralty originally recommended a blockade of the German North Sea harbours in time of war. This would have the effect of diverting a large amount of shipping to the small, neutral ports, which could probably not cope with the extra demand placed on them. In addition, British control of the maritime insurance market could be

¹⁹⁷ The Schlieffen Plan took its name from Alfred Graf von Schlieffen. It planned for rapid German mobilisation, ignoring Luxembourg and Belgian neutrality, and an overwhelming sweep of the German right wing through Belgium and Northern France in a southwesterly direction while maintaining a defensive posture only on the central and left wings, in Lorraine, the Vosges, and the Moselle. The idea behind the plan was to win a two-front war quickly by achieving victory in the West before Russia would be able to mobilise and attack East Prussia; the Plan scheduled 39 days for the fall of Paris – a rapid, decisive, short-war.

¹⁹⁸ Herwig, *First World War*, p.272.

¹⁹⁹ *Ibid.*, p.36.

²⁰⁰ Fisher, FISHER 1/5 264a *Letter from Fisher to Esher 7 Oct 1907* (1907).

used as a tool of coercion to prevent neutrals from trading indirectly with Germany. Bell quoted from the Admiralty report, which concluded that 'a serious situation would be created in Germany owing to the blockade of her ports, and that, the longer the duration of the war, the more serious the situation would become.'²⁰¹ A system of blockade once again showed direct and indirect effects, namely the effective internment in its own ports of a High Seas Fleet unwilling to engage the Grand Fleet, and the throttling of German overseas trade. The length of the war was therefore proportional to the severity of the results of the blockade; the longer the war, the worse the effect on the German economy.

The opinions of the various British Consuls-General differed from those of the Admiralty. With their more intimate knowledge of the German and Dutch ports, they concluded that any increase in trade at neutral ports would not cause long-term problems and that Germany could probably establish comparable amounts of trade through inland routes to the neutral ports unless of course these ports were subjected to a blockade.

The Fleet received new war orders in August 1910. Although there was no explicit mention of an economic blockade, the effect of the orders would have been to implement a close blockade, i.e. protect British and destroy enemy commerce; maintain a close watch on enemy traffic in the Dover Straits, between the Orkneys and the mainland and in the Atlantic; and improve the reconnaissance forces stationed off Germany. Bell²⁰² even referred to a draft proclamation of blockade prepared in December 1910, as it appeared inevitable that the military blockade would act as a commercial blockade.

The Case for the Prosecution: British Naval and Military Plans Developed

British plans against Germany continued to develop and were formalised not only by the Admiralty but also by the General Staff and even the French. It can be argued that the introduction of the Naval War College as a think-tank for strategy and tactics helped to

²⁰¹ Bell, *Blockade*, p.26.

²⁰² Ibid., p.28.

reverse the system of war planning instigated by Sir Arthur Wilson in his time as First Sea Lord; he regarded the production of war plans as his own business. A growing number of officers, knowledgeable of the practical problems of commanding a force of destroyers, light cruisers or flotilla leaders, disagreed with him. Wilson was more of a tactician than strategist i.e. he was more interested in the minutiae than the bigger picture, and was not keen on the idea of an economic blockade. He pushed aside all the earlier efforts made by Fisher and his staff to further economic warfare plans:

Churchill found that Fisher's successor was quite out of his depth in terms of modern strategy, weapons, and conditions, with no intention of consulting with anyone, certainly not the Army, or even his civil master, the First Lord.²⁰³

Wilson's position of autocratic, centralised control was one that he maintained until his departure from the Admiralty in 1911. Unfortunately for Wilson, it was his lack of strategic thought that inevitably led to his own downfall. As previously discussed, a meeting of the CID, what Ferguson described as the 'real war council',²⁰⁴ was convened on 23 August 1911²⁰⁵ to discuss the action to be taken in the event of British intervention in a European war. The Prime Minister, Asquith, opened the meeting by reviewing the findings of the Sub-Committee on 'Military Needs of the Empire' from 1908.²⁰⁶ The Sub-Committee had concluded that 'the expediency of sending a military force abroad or of relying on naval means alone is a matter of policy which can only be determined when the occasion arises'. It went on to authorise the General Staff to investigate the option of an expeditionary force more thoroughly. During the Sub-Committee's discussions, the Director of Military Operations Major-General Ewart²⁰⁷ talked at length about the employment of the British Army in the event of an attack by Germany on France. It was

²⁰³ Hough, *The Great War at Sea*, p.24.

²⁰⁴ Ferguson, *Pity of War*, p.65. Ferguson believes that this meeting set the course for a military confrontation between Britain and Germany.

²⁰⁵ Committee of Imperial Defence, *CAB 38/19/49*.

²⁰⁶ Committee of Imperial Defence, *FISHER 8/46, FP 4988 Meeting of the Sub-Committee to Consider the Military Needs of the Empire. 3 Dec (1908)*.

²⁰⁷ Ewart, Sir John Spencer (1861–1930). As Director of Military Operations (1906–10), Ewart provided crucial support for the army reforms of Lord Haldane, the Liberal Secretary of State for War (1906–10).

also recorded that the Royal Navy would be able to support the army's transport needs in order to give them safe passage across the English Channel:

The Prime minister inquired whether the Admiralty were prepared to guarantee the safe transport of the troops in the manner detailed by General Ewart. Mr McKenna said that the Admiralty could give this guarantee.²⁰⁸

At the meeting in 1911 however, Admiral Wilson's opening position was very different to the confident prediction given by McKenna a few years previously:

The Navy could spare no men, no officers and no ships to assist the Army...The Channel would, however, be covered by the main operations and provided the French protected the transports within their own harbours, the Admiralty could give the required guarantee as to the safety of the expedition.²⁰⁹

This carefully guarded statement was certainly not as unequivocal as McKenna's in 1908. The 1911 meeting then discussed the Admiralty's fundamental inability to provide a definite guarantee of safety to the expeditionary force's transports during a simultaneous fleet mobilisation. This problem was put aside temporarily whilst Brigadier Wilson,²¹⁰ Director of Military Operations, gave an appreciation of the military position in the event of a Franco-German war. The Brigadier's devotion to the French alliance²¹¹ had made quite an impact on British strategic policy making. Military staff talks about the possibility of the British providing direct assistance to the French had begun in 1905; only under Brigadier Wilson did they assume any real substance. Despite the growing strength of the entente with France, opinions in London were divided as to the action Britain should take in the event of a Franco-German conflict. A strong lobby, naturally well represented in the Admiralty, held to the traditional 'blue-water' strategy by which military intervention on the Continent was to be avoided and Britain's naval strength deployed to enforce a traditional blockade on the enemy. For the supporters of this naval strategy, not to mention those attracted to isolationism, the direct 'Continental commitment' such as that proposed by Brigadier Wilson was most objectionable. Brigadier Wilson, unlike his Admiralty

²⁰⁸ Committee of Imperial Defence, *FISHER* 8/46.

²⁰⁹ Committee of Imperial Defence, *CAB* 38/19/49.

²¹⁰ Wilson, Sir Henry Hughes, baronet (1864–1922).

²¹¹ Possibly as a result of being schooled by French governesses in his youth.

namesake, was aware of the benefits of economic blockade as he showed in a discussion on Dutch and Belgian neutrality:

If the Dutch allowed the Germans to make use of their territory in furtherance of their operations of war, we could retaliate by blockading Dutch seaports. Such retaliation would also increase the economic pressure on Germany.²¹²

This re-iterated the point made by the British Consuls-General earlier, that for an economic blockade to be effective, the neutral countries would also need to be blockaded in order to deny Germany the raw materials and foodstuffs it needed to obtain by means of indirect trade. The meeting then turned back to examine the Admiralty's policy, which was 'to blockade the whole of the German North Sea coast.' As Admiral Wilson began to expand on this plan, it became clear that it would be difficult to maintain, hard to justify and costly.

We had no wish to prevent the German Fleet from coming out, but unfortunately, if we left them free to do so, their destroyers and submarines could get out also, and their exit it was essential to prevent. If possible we should maintain upon the German coast-line with destroyers...At night a few only would be necessary; more in daytime. Outside the destroyers would be the scouts and cruisers, and on these the destroyers would retire when driven off by the enemy's larger ships, whose own retirement would then, if possible, be intercepted. Engagements would constantly occur, and there would be losses upon both sides every night.²¹³

This whole plan appeared rather haphazard, relying as it did on a very traditional layered blockade into which German warships might be coaxed and subsequently attacked. An obvious solution would have been to mine the channels but Wilson did not discuss this and carried on in a manner described by Strachan as 'shambling and ill-thought-out'.²¹⁴ Instead, he rather typically concentrated on the tactical aspects of landings on Helgoland and at the entrances to the Jade, Elbe and Weser, at Schillighorn, Wangeroog and Büssum.

According to McKenna,²¹⁵ the plan was doomed to failure because the General Staff had not apprised the Admiralty of their plans with the Foreign Office and the French. The traditional task of the navy had been to destroy the enemy's numerically inferior fleet and to attack his numerically superior army in rear or flank, exploiting the advantages of speed

²¹² Committee of Imperial Defence, CAB 38/19/49.

²¹³ Ibid.

²¹⁴ Strachan, *To Arms*, p.27.

²¹⁵ McKenna, *McKenna*, p.106.

and surprise. This was the traditional policy of every Government that relied on the navy as its first line of defence. McKenna went on to explain that this policy dated back to the days when the Fleet covered Wellington's landing in the Peninsula and Napoleon saw France afflicted with the 'running sore' that ultimately prostrated her. To the French, 'war' meant 'war by land' and this was entirely in concord with the views of Lord Haldane.²¹⁶ Any British Expeditionary Force would have been used to supplement manpower shortfalls in the French army. The tactics supposed that a British force would help to counter a German attack through Belgium or cover one line of the French army against encircling movements. The British force would certainly be far more than a raiding party of Marines, despatched at the whim of a First Sea Lord who relied on analogies from the Peninsular War.

In this 'Battle of the Wilsons', Hankey noted 'the grim old First Sea Lord was no match for the witty and debonair Director of Military Operations.'²¹⁷ Inevitably, Wilson's plan fell apart under scrutiny by the Army representatives at the meeting, despite the fact that Wilson expected his plan to threaten the safety of the Kiel Canal and retain some ten German divisions on the North Sea coast, thus aiding the efforts in France and placing economic pressure on Germany. Addition of this economic factor seemed to be almost an afterthought. Wilson's lack of strategic vision did nothing here to help the naval case, which was supported by 'economists' such as Fisher and Esher, both deliberately excluded from the meeting.²¹⁸ Offer cites both Hankey and Fisher to explain that the strength of a naval argument lay in the deterrence value of an economic blockade, not an actual close blockade of the type that Wilson proposed in detail.²¹⁹ The Chief of the Imperial General

²¹⁶ Lord Richard Burdon Haldane (1856-1928). Minister of War 1905 to 1912. He introduced a series of sweeping military reforms such as the creation of the Territorial Army, the Officer Training Corps and the British Expeditionary Force.

²¹⁷ Hankey, *Supreme Command*, vol I, p.81.

²¹⁸ Offer, *The First World War*, p.296.

²¹⁹ *Ibid.*, p.295.

Staff, Field Marshal Nicholson²²⁰ was quite damning in his response to Wilson's plan, particularly the inability to maintain the beachhead:

It was, he understood, admitted that the ships could not remain close in shore at night, even if their fire would be effective; therefore there was nothing to prevent the enemy attacking the detachments landed in overwhelming force and taking their positions with a rush, however well entrenched or defended they might be. As to the economic pressure, the Germans would mobilise these ten divisions in any case. The truth was that this class of operation possibly had some value a century ago, when land communications were indifferent, but now, when they were excellent, they were doomed to failure.²²¹

The discussion continued along these lines with Admiral Wilson attempting to defend, in vain, the plans of the Admiralty. Following this meeting, Asquith chose to support the 'Continental commitment' of the expeditionary force and both Wilson and the First Lord, McKenna, lost their positions in the Admiralty.

In May 1912 Churchill, the new First Lord of the Admiralty, and his staff, produced a new set of war orders. After some consideration, the plans for a close blockade of Germany, some 300 miles from the nearest British base, had the potential to inflict large and unnecessary damage on the British Grand Fleet. The notion of a close blockade was therefore abandoned in favour of a more distant blockade. Until the High Seas Fleet had been defeated, there was to be no close watch on the German coast, so the British Grand Fleet and the cruiser squadrons were to be withdrawn to the outer edges of the North Sea. The Admiralty's confidence in this plan was clear from this passage quoted in Bell:

The general idea upon which the initial stage of operations will be based is to utilise our geographic position to cut off all German shipping from oceanic trade. The situation will offer a parallel to that which prevailed in the Anglo-Dutch wars, and the same strategy will be applicable. Investigations have shown that such a proceeding would inflict a degree of injury upon German industrial interests likely to produce serious results upon the economic welfare of the whole State. A close commercial blockade is unnecessary for this purpose provided that the entrances to the North Sea from the westward are closed.²²²

These plans remained in force until the outbreak of war in 1914.

²²⁰ Nicholson, William Gustavus, Baron Nicholson (1845–1918). He later served on the CID during the First World War, participating in the commissions of inquiry into the Dardanelles and Mesopotamia campaigns.

²²¹ Committee of Imperial Defence, *CAB 38/19/49*.

²²² Bell, *Blockade*, p.31.

The Case for the Defence: The Rise of Germany – A Threat Perceived

The British defence at the Tribunal centred largely on the notion that Germany was becoming a threat to the British economy and therefore plans for economic warfare were a prudent measure.

Germany first started to become a maritime military rival to Britain with the building programme contained in the German Naval Laws of 1898 and 1900. One of the justifications for German naval expansion was to match its own relative economic expansion. Comparison of a number of indicators from 1880 and 1913 shows the German economy in direct competition with Britain. The British share of world manufacturing had dropped from 22.9% to 13.6% by 1913. By contrast, in 1880, Germany had a mere 8.5% share; but by 1913, this had risen to 14.8%. These figures become conclusive when considered alongside the total industrial potential and per capita industrialisation,²²³ as indicated in the table below:

Table 4: Industrial Potential and Per Capita Industrialisation of Britain and Germany²²⁴

(Britain in 1900 = 100)	1880		1913	
	Britain	Germany	Britain	Germany
Total Industrial Potential	73.3	27.4	127.2	137.7
Per Capita Industrialisation	87.0	25.0	115.0	85.0

These figures make clear that Germany represented a threat to Britain economically because a stronger economy and an increase in world trade also meant a stronger position of leverage in international politics.

With the rise in economic power of Germany, one of Britain’s traditional fears came to the fore, namely that of invasion. Spy thrillers of any era have always captured the imagination and at that time, one of the popular subjects concerned German spies and

²²³ Industrial potential and per capita industrialisation indicate the degree by which a country has grown from a pre-industrial state (an economy where the amount of capital accumulated per capita is low e.g. agricultural) to an industrial one.

²²⁴ Paul M Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (London: Random House, 1988), pp.256, 259.

invasion plans. The most famous of these was probably *The Riddle of the Sands*,²²⁵ but in his opening chapter on 'Myths and Militarism', Niall Ferguson²²⁶ provided details of many more books of this genre. The press undoubtedly had their part to play in influencing public opinion too, a position that has remained largely unchanged today. War both generated and sold news. Any hint of war or invasion was therefore profitable in the eyes of newspaper owners such as Lord Northcliffe, whose *Daily Mail* was one of the leading newspapers at the time. Again, Ferguson discussed the influence of the press in much more detail.

The architect of Germany's navy at the start of the twentieth century was Tirpitz. Upon his return to the German Admiralty in 1897 from the German base at Tsingtao, China, he wanted to ensure that the German navy could support properly German interests. In his memoirs, he recalled:

I had experienced myself how our Eastern Asiatic squadron could be rendered incapable at the slightest provocation by the refusal of the dockyards. In those days, the middle of the nineties, one noticed how the world was beginning to go more quickly. German trade, the 'Open Door,' could no longer be protected by flying squadrons; we had to increase in general power all round i.e. to qualify ourselves for an alliance with the Great Powers. But alliance-value could only be achieved by a battle fleet. One single ally at sea would have sufficed in the Great War to have enabled us to fight with the most favourable prospects for the freedom of the seas.

The first thing therefore was to create for ourselves a fleet which would give us alliance-value; and the second was a corresponding policy of alliance, and the avoidance of all political friction before this end was achieved. These were the two objects for which we had to strive amid the aggravated conditions of the times.²²⁷

It is interesting however, to read the above in the context of an earlier chapter of Tirpitz' memoirs in which he explained some of the fundamental aspects of German policy towards a battle fleet:

The plan of a German battle fleet was evolved without any idea of a war with England. It would have seemed perfectly crazy both politically and strategically to have waived the possibility of a later attack upon England. Before 1896 – that is, under Caprivi - the popular idea was, as I said, to regard England as the naval complement of the Triple Alliance against France and Russia. There was also no reason at that time to draw up defensive measures against England. The plan of operations which I drew up in 1895 has the 'two-front' war in view, and reckons in all its details upon a neutral England. I started on the assumption that we were to open the war against France not as a cruiser war, but with an engagement at sea. This is the origin of our construction of a battle fleet, but the unexpected demonstrations on the part of the British navy at the beginning of 1896, as well as the trade jealousy that was breaking out more and more undisguisedly, were naturally bound soon to add an English

²²⁵ Erskine Childers, *The Riddle of the Sands* (Harmondsworth: Penguin Books Ltd, 1903).

²²⁶ Ferguson, *Pity of War*, ch.1.

²²⁷ Tirpitz, *Memoirs I*, pp.120-121.

front to the French one... This brought a new point of view into our shipbuilding deliberations and caused Stosch [Lieutenant-General von Stosch, head of the Naval Department of the War Ministry] to draw up the plan of operations for defence against England which he had discussed privately with me.²²⁸

The two passages above serve to indicate some disparity in the reasoning behind Tirpitz' battle fleet plans. In the second passage, he mentioned the British 'trade jealousy' and it is possible that with the benefit of hindsight (the memoirs were published in 1919), he was trying to lay some initial blame for the war on British jealousy at German expansion rather than the German expansion itself. With this background, Tirpitz was therefore fully prepared to provide Germany with the battle fleet that he believed was needed. The next obstacle in his path was the provision of funding for the construction work.

The Case for the Defence: The Naval Laws – A Military Rival Develops

The roots of British naval expansion lay in the Naval Defence Act of 1889 and later the 'Spencer Plan' of 1894²²⁹ with its plans for the long-term construction of a series of capital ships. Under the German 1898 Law, battleships and cruisers were to be replaced after twenty-five years of service. A particular goal held by Tirpitz was the opportunity to have this replacement programme engrained as a matter of law and thus guarantee the continuation of the building programme. The following passage, again from his memoirs gives an idea of the problems he faced:

I needed a Bill which would protect the continuity of the construction of the fleet on different flanks. The circumstance that was most in the Bill's favour was that it intended to make the Reichstag abandon the temptation to interfere each year afresh in technical details, as they had hitherto done when every ship had become the 'exercise for debates'; and the Admiralty had not demanded what was most important in reality, but that which they could get passed in the interplay of changing majorities. But with party coalitions that treated ships as objects of compensation, it was impossible to construct such a naval armament as was demanded by a generation of patient, uniform growth... Apart from several threats to resign, I could only secure the continuity of development, which was the fundamental factor of success, by means of legislation.²³⁰

²²⁸ Ibid., pp.88-89.

²²⁹ John Poyntz Spencer, 5th Earl Spencer KG (27 October 1835 – 13 August 1910). First Lord of the Admiralty 1892-1895.

²³⁰ Ibid., pp.128-129.

The relatively benign Law of 1898 was overtaken in 1900 by a plan for thirty-eight battleships, twenty armoured cruisers and thirty-eight light cruisers. The intended size of the navy was to be equal to at least two thirds of the size of the Royal Navy if it was ever to stand a chance of matching the British. Steinberg records Tirpitz's view as early as 1897:

For Germany the most dangerous enemy at the present time is England. It is also the enemy against which we most urgently require a certain measure of naval force as a political power factor.²³¹

Ferguson²³² noted that Tirpitz's programme of naval construction did not necessarily mean war; it could be argued that it was simply intended to check British naval dominance. Tirpitz developed a 'risk theory' whereby, if the German Navy reached a certain level of strength relative to the Royal Navy, then Britain would try to avoid confrontation with Germany. If the two navies were to clash, the German Navy would have the potential to inflict sufficient damage that Britain ran the risk of losing their naval preponderance. Because Britain relied on the Royal Navy to maintain control over the Empire, Tirpitz felt that Britain would rather maintain naval supremacy in order to safeguard the British Empire, and let Germany become a world power, than lose the Empire at the cost of keeping Germany less powerful. The benefit of his 'risk theory' was explained by Tirpitz to the Kaiser in 1899 saying that the Naval Laws would make Britain 'concede to Your Majesty such a measure of maritime influence which will make it possible for Your Majesty to conduct a great overseas policy'.²³³ The German plan depended on the size of the Royal Navy remaining constant, which of course it did not. Raffael Scheck describes how the Tirpitz Plan failed:

Counter to Tirpitz's predictions, the British Parliament granted all funds necessary to preserve maritime hegemony, and the British even increased their superiority between 1904 and 1914. The risk theory had made sense in 1897, with Britain at odds with France and Russia, but it became questionable once the British- under the pressure of German fleet building- concluded agreements with Japan in 1902, with France two years later, and with Russia in 1907. It was hard to imagine which fleet would now have an interest in attacking the remainder of the Royal Navy after its projected battle with the Germans.²³⁴

²³¹ Steinberg's, *Yesterday's Deterrent*, p.126.

²³² Ferguson, *Pity of War*, ch.1.

²³³ Berghahn, *Approach of War*, p.53. Berghahn also produced the definitive German-language account of the Tirpitz Plan in Volker R. Berghahn, *Der Tirpitz-Plan: Genesis und Verfall einer innenpolitischen Krisenstrategie unter Wilhelm II.* (Dusseldorf: Droste Verlag, 1971).

²³⁴ Raffael Scheck, *Alfred von Tirpitz and German Right-Wing Politics, 1914-1930.* (Humanities Press Inc: Boston, 1998), p.7.

Although Tirpitz's risk theory was ultimately a failure, Steinberg notes 'the passage of the Naval Law of 1898 and its successors was not [a failure]. Tirpitz's skill as a domestic politician was remarkable.'²³⁵

Summing Up: Perceived Legality of Blockade Plans

In reviewing the evidence provided for the Manchester War Crimes Tribunal, the legality of the British plans for economic blockade can be considered from a number of viewpoints. At the turn of the century, the war plans were prepared with the specific aim of countering German economic expansion. At around the time of the Declaration of London in 1909 (but not because of it), the possibility developed of a real war with Germany and the economic and military implications associated with a blockade came further to the fore. Analysis of the evidence obtained to date would show that British plans remained secret, regardless of the fact that they were a retaliatory measure rather than a cause of war.

The case for the prosecution made it clear that Britain did plan to conduct a campaign of economic warfare against Germany that by its nature would be protracted and therefore in keeping with a long-war strategy of starvation. German plans such as the Schlieffen Plan however, were always predicated on the basis of a short war. There was however little evidence to show that Britain planned a sustained campaign against the German people however, as much of the effort in planning was to effect a short, sharp shock on Germany's imports more in line with a short-war strategy. There would certainly have been grounds for German prosecutors to investigate the legality of Britain's plans further.

Regarding the legality of Britain's actions in planning an economic warfare campaign, it is felt that the Declaration of London offered some legal protection to the British plans but the overwhelming naval practicalities and issues of force protection for

²³⁵ Steinberg's, *Yesterday's Deterrent*, p.206.

the Grand Fleet meant that it could not adhere strictly to the blockade envisaged by the Declaration of London.

A Return to Real History: Germany Defeated

An enduring and morally difficult debate arose with the end of the war and the Treaty of Versailles. Prior to the Peace Conference at Versailles, a committee chaired by Robert Lansing, the US Secretary of State submitted a 'war-guilt clause' based largely on the conclusions of his committee saying:

The War was premeditated by the Central Powers together with their allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable. Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the Entente Powers.²³⁶

Article 231 of the Peace Treaty of Versailles eventually used this text when justifying reparations:

The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.²³⁷

Offer²³⁸ suggested that omission of British economic warfare plans from the memoirs of war leaders was to avoid potential embarrassment for the Government and to ensure that any blame for the cause of the war lay firmly with Germany, as stated in the Treaty of Versailles. This was one example of the degree of interpretation applicable to the Declaration of London. Maurice Hankey explained a more realistic view of the Declaration in a letter to a Treasury official in 1928 regarding commerce at sea:

In the Debates on the Declaration of London in 1910 it was stated that the Board of Admiralty accepted that fettering instrument. Lord Fisher, when pressed on that point, told me he accepted it because he knew it would break down in war. This seemed to me a cynical frame of mind in which to accept a solemn international engagement. The Admiral of the Fleet's cynicism, however, was justified by the event. The Declaration as a whole lasted just over a fortnight, the first break in it being made by our Order in Council of August 23rd. But, even though unratified, nearly two years elapsed before we could (in July 1916) finally get rid of this hampering instrument. In the meantime it caused us the greatest embarrassment in our relations with neutrals, and did more than anything else to exacerbate our relations with the United States of America in the first few months of the War.... Moreover, all our preparations for war in the economic sphere had been based on the assumption that

²³⁶ Commission on the Responsibility of the Authors of the War, *Report on War Guilt* (1918).

²³⁷ *Peace Treaty of Versailles*, 28 Jun 1919. Available: <http://www.hcu.ox.ac.uk/mirrors/www.lib.byu.edu:80/~rdh/wwi/versa/versa7.html>.

²³⁸ Offer, *The First World War*, p.228.

the Declaration of London and the entanglements of the Hague Conference would hold good. The result was that, instead of being prepared with a properly thought out administrative plan, when the various conventions broke down we had to improvise all the vast machinery of economic warfare (War Trade Department, Trade Intelligence, Commercial Censorship, and ultimately the Blockade department) during the War, with loss of efficiency.²³⁹

This quote suggested that any plans for economic warfare were predicated on the basis that the Declaration of London could provide a legal justification for Britain's actions.²⁴⁰

If the conduct of the Manchester War Crimes Tribunal was similar to Leipzig in 1921, German prosecutors might have found it difficult to identify individuals who could be tried although those instrumental to the planning such as Hankey might have been prime targets for the Courts. If Germany had really forced Britain to capitulate in a manner more like the bitterly negotiated Treaty of Brest-Litovsk²⁴¹ with Russia on 3 March 1918, the German Courts would probably have taken a much harder line against Britain and a more hostile interpretation of the law might have led to convictions against the British naval officers upholding the blockade.

²³⁹ Maurice Hankey, Lord, *HNKY 5/1 Letter to PJ Grigg (Treasury)* (1928).

²⁴⁰ Offer believes that the Declaration of London may have added ambiguity to the naval strategic situation by leaving legal loopholes for Germany to trade with neutral countries. Avner Offer, *The Blockade of Germany and the Strategy of Starvation, 1914-1918* in Roger Chickering, and Stig Förster (eds), *Great War, Total War. Combat and Mobilization on the Western Front* (Cambridge: Cambridge University Press, 2000), p.172.

²⁴¹ The Treaty of Brest-Litovsk was signed between Soviet Russia and the Central Powers on 3 March 1918. After the separate armistice of 5 December 1917, long, bitter negotiations were conducted by Trotsky for Russia, von Kühlmann for Germany, and Count Czernin for Austria-Hungary. After Trotsky pulled out of the negotiations, Germany resumed the war on 18 February 1918 and subsequently seized huge tracts of Soviet land, forcing the Soviets to accept the German ultimatum at Lenin's insistence. This resulted in conditions even harsher than those agreed in 1917. Russia was forced to recognise the independence of Ukraine and Georgia; confirm the independence of Finland; and give up Poland, the Baltic States, and other territories. Following the general armistice of 11 November 1918, Germany was forced to renounce the treaty, and Russia declared it null and void.

3. Changing strategy and the conduct of the war at sea until July 1916: The expectation of a short-war

The First World War marked a time of great strategic change; illusions, preconceptions and plans were all shattered. Norman Angell²⁴² believed that a system of mutually beneficial and supportive financial structures between nations would make war unthinkable whereas the Admiralty believed that it could bring Germany to its knees by implementing an economic blockade using the plans described in the previous chapter. The German High Command in turn, believed that they could strike a quick and decisive blow against France and win, well before France's Russian allies ever began to mobilise. The advent of the First World War proved all of these concepts and beliefs to be utterly false.

Britain's original intent was to make a traditional contribution to the war. It would be 'naval, colonial and financial, perhaps with small professional forces on the Continent.'²⁴³ Brigadier Henry Wilson, a firm believer in giving support to France, pushed for the British Expeditionary Force to be committed as soon as possible when war broke out. Lord Kitchener however was very much in the minority in foreseeing a conflict measured in years rather than months and was looking for a longer-term strategy.

The summer of 1916, marked by the Battles of Jutland²⁴⁴ and the Somme, was a strategic turning point in the war. Although these battles were fought in completely different environments, each was important in its own way. On the first day of the Battle of the Somme, some 20,000 British men were killed (alongside many more from other nations). The Somme greatly accelerated the transition to 'total war'; and with it, the unavailability of a strategy of attrition, of wearing down the enemy, of blockade and counter-blockade. The losses at Jutland of only 6,094 British (and 2,551 German) sound

²⁴² Norman Angell, *The Great Illusion: A Study of the Relation of Military Power to National Advantage* (London: William Heinemann, 1909).

²⁴³ Stevenson, *History*, p.36.

²⁴⁴ See Andrew Gordon, *The Rules of the Game: Jutland and British Naval Command* (London: John Murray, 1996) for further details.

much smaller but in a different environment, different considerations are important. The table below shows how these losses equated to ships and from the naval perspective, the British losses were severe.

Table 5: British and German Naval Losses at Jutland²⁴⁵

Type	Britain	Germany
Battle Cruisers	3	1
Pre-Dreadnoughts	0	1
Armoured Cruisers	3	0
Light cruisers	0	4
Flotilla Leaders	1	0
Destroyers	7	5
Total	14	11

The second part of this thesis investigates the use of blockades throughout the First World War. In this, and the next chapter, the thesis investigates the conduct of the war, with the summer of 1916 marking the division between the two. Chapter five uses several case studies to examine the economic effects of the war on Britain and, to a lesser extent, Germany.

Command of the Sea

In Britain, Sir Julian Corbett, whose lectures at the Naval War College were compiled into his 1911 book entitled *Some Principles of Maritime Strategy*, had shaped naval thought.²⁴⁶ Corbett studied many of the classic military theorists such as Carl von Clausewitz and Antoine-Henri Jomini,²⁴⁷ and applied their works to the maritime environment. The opening words of his section on the theory of naval war stated ‘the object of naval warfare must always be directly or indirectly either to secure the command of the sea or to prevent the enemy from securing it.’ This ‘command of the sea’ was then defined as ‘nothing but the control of maritime communications, whether for commercial or military purposes.’ The theory taught to naval officers of the time (and is still central to

²⁴⁵ Halpern, *Naval History*, p.325.

²⁴⁶ Corbett, *Maritime Strategy*.

²⁴⁷ See also Michael Handel, *Masters of War: Classic Strategic Thought* (London: Frank Cass, 1992) and Azar Gat, *A History of Military Thought: From the Enlightenment to the Cold War* (Oxford: Oxford University Press, 2001).

current naval doctrine) was therefore one that offered the enemy no opportunity to ply its trade or exercise its own naval fleet. Several options therefore existed when considering how to wage war with an enemy: the first would of course be to destroy the military capability of the enemy. A swift victory at sea could achieve this, a new 'Trafalgar'. This plan would of course be reliant on the enemy being co-operative and putting to sea. With the German High Seas Fleet at the beginning of the First World War outnumbered by the British Grand Fleet by some sixty percent,²⁴⁸ this would have been at best foolhardy for Germany. A second option was therefore to prevent an enemy's fleet from reaching open waters and thereby remove its maritime capability through denial of the use of the sea for any means. The first option was of course the more favourable to the naval officer of the time, schooled in gun drill and with the victory at Trafalgar imprinted on the corporate mentality. Other great battles had also 'proved' that the decisive battle at sea was the best option. The Japanese victory over the Russian Fleet at the Straits of Tsushima on 27-28 May 1905²⁴⁹ could be cited as such an example. This willingness to go for a swift victory produced a form of 'groupthink' amongst many naval officers and gave rise to the unshakeable belief in the short-war theory.²⁵⁰

The Decisive Battle and Short-War

Much of the planning efforts and initial actions on both sides were predicated on a war being won or lost in a matter of weeks or months rather than years. Originally intended as a tool for a quick victory, the Schlieffen Plan was modified by Helmuth von

²⁴⁸ Naval Historical Branch, *Naval Staff Monologues (Home) X Home Waters* (nd), pt.1, Appendices A and B; Halpern, *Naval History*, ch.1.

²⁴⁹ In the largest naval battle of the pre-dreadnought age, Admiral Heihachiro Togo's Japanese fleet destroyed two-thirds of the Russian fleet under Admiral Zinovy Rozhdestvensky. The battle was however very one-sided, with the Russian fleet in a poor state of repair and at the end of a protracted period of operations.

²⁵⁰ For more background on this corporate mentality, see Gordon, *Rules of the Game*.

Moltke the Younger.²⁵¹ The original plan envisaged a two-front war, with the main attack being to the west. To support this and to outflank France's defensive forces along the frontier, the German right wing was supposed to go through Belgium making use of its extensive railway network and skirt through the southern end of the Netherlands. Moltke actually amended the plan by strengthening his left wing and avoiding the Netherlands completely, possibly in an attempt to maintain goodwill with a neutral trading nation. A key element to Moltke's modified plan was the seizure of the Belgian city of Liège and with it, the railway networks that it controlled. This was completed with the destruction of the defenders' forts at the beginning of August 1914. There then followed a series of engagements that became known as the Battle of the Frontiers (20-24 August 1914). By that time, and with some 75,000 French soldiers killed, the allies began to retreat. Following this retreat, the French forces regrouped and on 6 September 1914, the Battle of the Marne began. It, in turn, forced the Germans to retreat and by the time it ended on 12 September, it marked the beginning of the stalemate of trench warfare that was to become the hallmark of the land war until the early summer of 1918. Already it was becoming obvious that the war would not be a short one, but the short-war illusion was still not dead as the 'one more push and the war will be over' mentality still managed to endure. As C. Paul Vincent noted 'Falling into Schlieffen's trap of discounting the possibility of a long war in the modern age, Germany was unprepared for a conflict lasting more than a few months'.²⁵²

In August 1914, the methods of employment for German submarines indicated that naval planners were unaware of their strategic potential. The U-boats started the war as

²⁵¹ Mombauer argued throughout her 2001 study of von Moltke the Younger that his modification of the Schlieffen Plan was to make it an effective war plan, appropriate to the changed strategic situation. Annika Mombauer, *Helmuth von Moltke and the origins of the First World War*. (Cambridge: Cambridge University Press: 2001).

²⁵² Vincent, *The Politics of Hunger*, p.18.

little more than floating observation platforms employed to warn their own Fleet of the advancing British Grand Fleet. Philip Lundeberg²⁵³ noted:

Relative unanimity existed among German naval writers on the initial point that the Imperial Navy had possessed neither the capability nor the intention in August 1914 of launching a submarine offensive against merchant shipping of the Entente.²⁵⁴

This low opinion afforded to submarines was prevalent in Britain too as Lloyd George observed:

I am not sure that the submersible ship was to the Admirals who strode on the quarter deck of mammoth battleships anything more than a fanciful experiment. They never took it very seriously as a real contribution to the struggle for the control of the seas. At best it might perhaps help the ships of the line as an invisible scout, and maybe, by lucky accident, cripple or with extreme luck, sink one or two stray enemy warships.²⁵⁵

Lambert's thesis²⁵⁶ challenged the view that Britain (and other nations such as France and the US) failed to assess properly the military potential of the submarine. He charted the development of submarine policy from the end of the nineteenth century to the start of the First World War; notably however the development of strategic thought in Germany received little attention. Gibson and Prendergast stated 'implicitly was it believed by the German naval command in those days that, even before any declaration of war, Britain would launch a massed attack with her entire sea forces upon the German coast'.²⁵⁷ This was an interesting comment not only because of the obvious adherence to traditional naval views, but also because of the suggestion that such an engagement might have occurred prior to the formal commencement of hostilities between the two nations. At such an early stage, even prior to the formal outbreak of hostilities, the normal rules of war and legal considerations were already viewed with some suspicion. As it turned out, German submarines waited at sea for a British pre-emptive strike for two days before Britain declared war on 4 August 1914 and still the onslaught did not come. With little return in sight, the German submarines therefore probed further into the North Sea, and

²⁵³ Dr Philip K Lundeberg performed extensive research in Germany and analysed many of the German-language sources available in the 1960s.

²⁵⁴ Lundeberg, 'Critique', p.105.

²⁵⁵ Lloyd George, *War Memoirs I*, p.669.

²⁵⁶ Lambert, 'Naval Strategic Thinking'.

²⁵⁷ Gibson and Prendergast, *Submarine War*, p.2.

after a few skirmishes with British warships, returned to their home ports. The strategic value of these first actions however far outweighed their tactical value. British warships soon came to realise that German submarines were capable of putting to sea and covering great distances.

A new form of paranoia quickly began to emerge in the Grand Fleet, where 'sightings' of periscopes were numerous and the viability of previously 'safe' anchorages was soon questioned. The incident that raised the profile of the U-boats in the early part of the war was undoubtedly the sinking on 22 September 1914 of the cruisers *Aboukir*, *Cressy* and *Hogue* by Otto Weddigen's *U-9*. This action resulted in the loss of sixty-two officers and 1073 men, many of whom were old reservists and midshipmen.²⁵⁸ In those early months of the war, Germany experimented with the U-boats, testing not only their own endurance and range, but also probing the British defences. Lundeberg noted that the first moves towards a German commerce raiding policy resulted from 'reports of the vulnerable flow of British and Allied ships observed by U-boat commanders on their return from Channel and Irish Sea operations against the Grand Fleet.'²⁵⁹ The presence of enemy submarines at such great distances from their home ports in Germany led Admiral Jellicoe to the opinion that the U-boats were working in one or more patrol lines, were based in the Norwegian fjords, and were supplied at sea by tenders or parent ships. This theory of support ships was erroneously maintained in naval circles for the first eighteen months or more of the war.²⁶⁰ What was clear however was that the submarine was certainly capable of acting as far more than a simple observation platform.

Germany appears but to have toyed with the idea of conducting commerce warfare against Britain. Strachan noted that in early 1914, Germany's eighteen submarines were adapted for coastal defence and submarines were only an adjunct to the operations of

²⁵⁸ Ibid., p.7.

²⁵⁹ Lundeberg, 'Critique', p.107.

²⁶⁰ Naval Historical Branch, *X Home Waters*, pt.1, p.68.

surface warships.²⁶¹ Gerd Hardach²⁶² recorded, prior to 1914 commercial warfare played 'no more than a subordinate role in German naval planning.'²⁶³ During the winter of 1913-14, the subject of a German naval staff exercise was a commercial war employing cruisers and armed merchantmen. According to this exercise (unreferenced by Hardach), the prospects of causing grievous damage to Britain by means of a commerce war were very favourable. The report of the exercise was however based on dubious statistical evidence and did not take into account the need to provide logistic supports to the participating units.²⁶⁴ If this exercise had considered the use of submarines, the conclusions may have led to earlier employment of the U-boats as commerce destroyers. The question of whether or not Germany had considered, before the war, the use of submarines against British commerce is open to some debate.²⁶⁵ Whilst Gibson and Prendergast gave the impression that the development of submarine tactics and strategies was a simple development from the early days of the war onwards, there was also some discussion on German pre-war exercises involving submarines.²⁶⁶ One German report stated:

No preparation had been made in the German Navy for the employment of submarines against enemy commerce prior to the outbreak of the war in 1914. The German naval authorities had developed no plan of operations whereby an enemy, England, could be attacked through her overseas commerce, and thus become possessed of a weapon which would really be effective in operations against the vital nerve of an island empire.²⁶⁷

This was contradicted by another which stated 'True, before the outbreak of war one of the best technical experts in this weapon, Lieutenant Commander Blum, had calculated the number of submarines necessary to conduct cruiser warfare against England, and had placed this number at 200.'²⁶⁸ Likewise, Hardach noted 'from the beginning of 1914, U-boat officers were of the opinion that commercial warfare was the task to which the new

²⁶¹ Strachan, *To Arms*, p.412.

²⁶² Gerd Hardach was a Professor of Social and Economic History at the University of Marburg in 1977.

²⁶³ Gerd Hardach, *The First World War 1914-1918* (London: Allen Lane, 1977), p.35.

²⁶⁴ Ibid.

²⁶⁵ See also Hough, *The Great War at Sea*, p.173 and Halpern, *Naval History*, p.291.

²⁶⁶ Gibson and Prendergast, *Submarine War*, p.26.

²⁶⁷ Alfred Spindler, Rear Admiral German Navy, 'The Value of the Submarine in Warfare', *US Naval Institute Proceedings*, (May 1926), p.837.

²⁶⁸ Captain A Gayer, 'German Submarine Operations, 1914-1918', *US Naval Institute Proceedings*, (April 1926), p.622.

submarine arm was best suited.'²⁶⁹ Without digging too deeply into this area, it is clear that some doubt can be raised over claims, from even the highest sources,²⁷⁰ that Germany had not considered some form of U-boat warfare against British commerce.

Comparing U-boats with the use of mines, the Naval Staff Monographs (Historical) series, compiled after the war (1924 onwards), provided a useful insight into both British and German plans (based on German Official Histories and documents released by Germany after the war). For example, the German operations orders for the conduct of war in the North Sea stated:

A ruthless minelaying campaign as one of the means by which the equalisation of the British and German Fleets was to be accomplished.... There was no question of undertaking mining operations off the British coast with the light cruisers and destroyers fitted for the purpose, for these would all be needed for reconnaissance work and in a fleet action.²⁷¹

On 1 August 1914, a former Sassnitz-Trelleborg ferry began conversion to become *Auxiliary Minelayer B*. Better known as the *Königin Luise*, her orders were despatched immediately following the British declaration of war at 6.30pm, on 4 August 1914. She was told to proceed at utmost speed in the direction of the Thames. There the *Königin Luise* was to lay her mines as near as possible to the English coast but not off neutral coasts, or further north than 53°N.²⁷² Sunk on 5 August 1914 by *HMS Lance* (the first British shots of the war), the *Königin Luise* had only a short operational life. The Admiralty, in issuing a report to the Press on the sinking, raised against Germany a charge of 'laying mines with deliberate intention to damage merchant vessels and not in connection with military harbours or strategic positions.'²⁷³

In an effort to justify the minelaying operation of the *Königin Luise*, the German Government informed all neutral states that German mines would close the routes to British ports. This policy however, had a contrary effect on Germany, as Hankey pointed

²⁶⁹ Hardach, *First World War*, p.35.

²⁷⁰ Scheer, *High Sea Fleet*, p.224.

²⁷¹ Naval Historical Branch, *X Home Waters*.

²⁷² Up to the top of The Wash, near Boston.

²⁷³ Naval Historical Branch, *X Home Waters*, p.52.

out in an undated memorandum (which appeared to be from around December 1914 or January 1915):

Within a week of the outbreak of war the German mercantile flag had been driven from the high seas.... By laying mines at many places in the North Sea the German Admiralty increased the reluctance of neutrals to send their vessels to German ports which was not allayed by the reported destruction of several neutral ships, not only off British ports, but in the Elbe and off the Dutch coast...The net result was that for the first six weeks of the war there was a practical boycott of the German North Sea Ports by all shipping. Probably some shipping has continued in the Baltic, but evidence is lacking.²⁷⁴

All of these events were in support of the supposed decisive battle meant to bring about an early end to the war.

The Need for Strategic Thought

Bobbitt²⁷⁵ discussed changing technology and the effect that it might have had on strategic planning. In the days of the nation-state during the First World War, strategic planning was simply a case of extrapolation from the present position. This relied on knowledge of the present. In the developed market-state, he argued that strategic planning was not so much about extrapolation, but about considering alternative scenarios. Armed with these scenarios, the state might be better prepared for changing circumstances if possible outcomes are considered, based on issues emerging from different fields. During the First World War, strategic thought with regard to the war was very much an extrapolation of the present and was not prepared for the alternative futures that new technology at sea was to bring. The problem with trying to exploit the potential of submarine warfare was that the use of submarines was a developing art and it moved at such a rate that the planners were unable to keep up with the technology and tactics.

Denial of Maritime Communications – An Alternative Strategy

When Corbett described the principle of command of the sea, he considered this as not only a military issue, but also one that would affect commercial traffic. The previous chapter investigated some of the British war plans for the implementation of a blockade

²⁷⁴ M Hankey, *CAB 1/11/2 Notes by Sir M Hankey* (Dec 1914/Jan 1915).

²⁷⁵ Bobbitt, *Shield of Achilles*, ch.25.

against Germany, but now it is worth considering the first stages of the practical development of that strategy and some of the problems encountered. Two issues of strategic interest were worthy of consideration: the British decision to start laying minefields, and the problem of disposal of merchant vessels by submarines.

British Mines

So far, little mention has been made of the measures implemented by Britain to enforce the blockade. One of the principal means was to deploy mines. In a 1914 paper on the subject of mining,²⁷⁶ Winston Churchill categorised the two types of naval mining available as ambush and blockade mining. On the subject of blockade mining, Churchill rightly noted 'it is not possible to blockade a modern fleet by mining, even on a very large scale, unless superior force is maintained in the neighbourhood of the minefield to prevent the mines being removed.'²⁷⁷ The principal danger involved with blockade mining was of course the need to lay mines in close vicinity to the enemy's coastline or harbours. Neither was it feasible for Britain to maintain a close blockade of any sort off the German coast. The other option was therefore to conduct ambush mining. The traditional method of ambush mining was to lay mines in the expected course of an enemy before or during a battle, or if possible, along its homeward. Churchill noted the successes that German minelayers had scored off the British coast with this tactic, but was wary of their 'promiscuous and haphazard uses'.²⁷⁸

Hampered initially by the poor quality of mines available, the British minelaying policy was slow to develop. Germany however had the foresight to develop effective mines and torpedoes in order to maximise the effects of every engagement with the Grand Fleet. Britain on the other hand had concentrated on the big guns of the *Dreadnoughts* and had not made any significant improvements in smaller weaponry. As late in the war as

²⁷⁶ Winston S Churchill, *FISR 8/60 Notes on Mining* (1914).

²⁷⁷ *Ibid.*, p.2.

²⁷⁸ *Ibid.*

April 1917, only 7.5% of the 20,000 British *Elia* mines available were considered as being fit for laying. It was not until late 1917 when British scientists had copied the designs of the German contact E-mine that reliable mines were produced.²⁷⁹

British Minefields

By early October 1914, the incursion of enemy submarines into the Channel was becoming so serious that a change in the policy for patrolling the English Channel was required. The troop and supply transports to France were vital for the war effort and the possibility of any German interference with these transports was of course completely unacceptable. Admiral Ballard²⁸⁰ advocated a reduction in the visibility of navigation lights but recommended that a far more effective solution would be to mine the Straits of Dover. A further benefit of this mining would have been to place a stranglehold on the trade to Rotterdam. The Dutch Government at this stage in the war was either unwilling or unable to give the appropriate undertaking that supplies imported into the country would not eventually find their way to Germany; the Admiralty policy was to discourage trade through Rotterdam by every possible means and this included the refusal to include it in the State Insurance Scheme.²⁸¹ A memorandum from Hankey reinforced this policy:

Foodstuffs, however, had on August 4th been declared contraband, and the receipt of information to the effect that the Government was controlling all foodstuffs in Germany was considered sufficient ground for treating them as contraband, if consigned to Germany.

The Government, however, recognised that they were not on secure ground from a legal point of view in stopping foodstuffs consigned to neutral countries contiguous to Germany, and that some system would have to be arranged. The difficulty was most acute in the case of Holland. Although the Dutch government had early in the war prohibited the export of foodstuffs to Germany it was known that the prohibition was not being enforced.... The Dutch Government was therefore informed that cargoes of foodstuffs consigned to Dutch ports would be brought into British ports for examination and would only be allowed to proceed on receipt of an understanding from the Dutch Government that, neither those consignments nor their equivalents should be exported to Germany. This arrangement although administratively convenient to ourselves, and galling to the Dutch Government, should convince them of the firm intention of His Majesty's Government to prevent the ingress of foodstuffs to Germany through Holland.

Similar drastic treatment was not applied to Denmark, Norway or Sweden.²⁸²

²⁷⁹ Naval Historical Branch, *Naval Staff Monologues (Home) VIII Home Waters* (nd), p.87.

²⁸⁰ Rear Admiral George Ballard, Admiral of Patrols.

²⁸¹ Fayle, *Seaborne Trade*, p.297.

²⁸² Hankey, *CAB 1/11/2*.

On 2 October 1914, the following communication was sent to the Press and the neutral powers:

The German policy of minelaying, combined with their submarine activities, makes it necessary on military grounds for the Admiralty to adopt counter-measures. HM Government have therefore authorised a minelaying policy in certain areas, and a system of minefields has been established and is being developed upon a considerable scale. In order to reduce risks to non-combatants, the Admiralty announces that it is dangerous henceforward for ships to cross the area between lat 51 15'N and 51 40'N, and long 1 35'E and 3 E. In this connection it must be remembered that the southern limit of the German minefield is at lat 52 N. Although these limits are assigned to the danger area, it must not be supposed that navigation is safe in any part of the southern waters of the North Sea.

Instructions have been issued to HM ships to warn eastgoing vessels of the presence of this new minefield.²⁸³

This record also took an unsurprisingly biased view as it commented 'In the publicity which was given to the presence and position of the minefields, and the precautions taken to ensure the safety of trading vessels of all nationalities, lay the essential difference between the British and German policies of laying mines in the open sea.'²⁸⁴ This was a clear statement of Britain's assumption of the legal and moral high ground on this issue. Implicit was the accusation that Germany's indiscriminate mining of the high seas was in contravention of international law.

Prior to a final decision on the minelaying policy, the Admiralty asked the Commander-in-Chief for his view as to whether the policy should apply to the Helgoland Bight or in the Straits of Dover.²⁸⁵ Admiral Jellicoe strongly advised the Straits of Dover option on the basis that a minefield laid in the Helgoland Bight could not be observed continuously and could be swept quickly by German forces. He also pronounced mining off German river mouths as being too dangerous. The Admiralty was not happy with this policy and preferred in turn to maintain armed patrols across the Straits of Dover without the restriction of having to avoid minefields. Admiralty opinion on mining was instead turning to the Helgoland Bight. In May 1915, against the advice of Commodore Keyes,²⁸⁶ who wanted to keep the area free of British mines so as not to endanger his submarines, a

²⁸³ Ibid., vol.11, p.71.

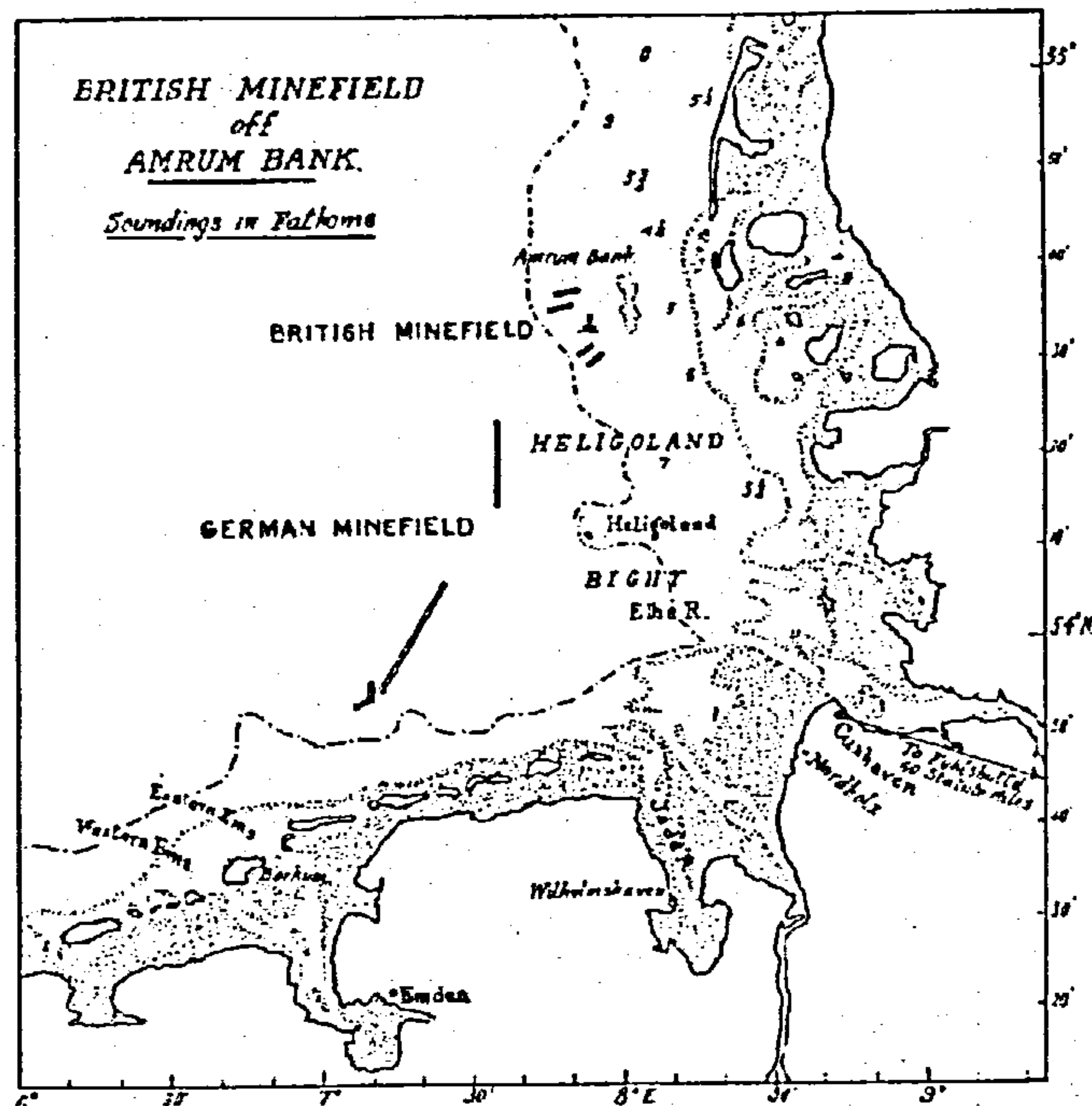
²⁸⁴ Ibid.

²⁸⁵ Naval Historical Branch, *X Home Waters*.

²⁸⁶ Keyes, Roger (1872-1945). Keyes was a key figure in the early development of British submarines as Inspecting Captain of Submarines in 1910 and then Commodore, Submarines 1912-1915.

British minefield was indeed laid in the Helgoland Bight in the waters to the west of the Amrum Bank at the northern part of the Bight.²⁸⁷

Figure 1: British Minefields Laid off Amrum Bank in 1915



It is interesting to note though that in the Naval Staff Monographs (Historical), there was a footnote to the effect that three weeks previously to Jellicoe's recommendation to mine the Straits of Dover, he had advocated an operation to lay mines off Helgoland.²⁸⁸

Britain continued to lay mines, much to Jellicoe's disapproval, until Beatty became Commander-in-Chief in December 1916. The minelaying during Jellicoe's tenure had been sporadic at best and Beatty adopted a much more aggressive mining policy and coupled with improving use of intelligence against German minesweeping efforts, managed to make British mining a more effective weapon against German ships and submarines.²⁸⁹

Disposal of Merchant Vessels by Submarines

The other strategic issue of the time also related to international law and involved issues of both rules and regulations, and the preservation of life. On 15 October 1914, the

²⁸⁷ Naval Historical Branch, *Naval Staff Monologues (Home) XII Home Waters* (nd), p.162.

²⁸⁸ Naval Historical Branch, *X Home Waters*, vol.11 (Sep/Oct 14), p.70.

²⁸⁹ Cowie, *Mines*.

German submarine *U-17* under the command of Lieutenant Feldkirchner sighted the 526-ton British steamer *Glitra*, off Leith, on its way from Grangemouth to Stavanger with a load of coal, coke, oil and general goods. At this early stage in the war, the question of disposal of an enemy merchantman captured by a submarine had not yet arisen, probably because the concept of a submarine possessing the capability to capture a surface ship had not generally been considered. Both the British and German Naval Prize Regulations gave Commanding Officers of warships a high degree of latitude in the matter of destroying enemy merchantmen. The principal deterrent against destruction appeared from Article 76 of the British Prize Manual to be the fact 'that the owners of neutral goods, other than contraband, on board enemy ships are entitled to compensation, and that, in cases where such ships are destroyed without good cause, the liability for such compensations may be cast on the naval officer.' The German Prize regulations (Article 112) were a little less daunting to a Commanding Officer and permitted the destruction of an enemy merchantman 'if it appears inexpedient or unsafe to bring her into port'.²⁹⁰ Feldkirchner appears to have been the first submarine Commanding Officer to take advantage of this. Giving the crew of the *Glitra* ten minutes to abandon ship, he sank the steamer and in an act of humanity not often repeated later in the war, towed the ship's boats for a short distance before a pilot boat was able to pick them up.

Neutral Concerns

Both the sinking of the *Glitra* and the laying of the British minefield in the English Channel were rightly a cause for concern to neutral trading nations. The British measures taken to stop or at the very least attempt to minimise the transport of contraband exacerbated these concerns. Admiral Beatty, Vice Admiral of the cruisers of the Grand Fleet, was still not satisfied with the measures available to the Royal Navy. He advocated a move towards a change in policy whereby control of shipping would be exercised from

²⁹⁰ Naval Intelligence Department, *FO 608/245 NA 114764 CB 1182A German Navy* (1918), p.122.

shore rather than at sea. The matter of boarding a ship was in practice a lengthy one and with the increased threat from submarines, was considered highly dangerous. At an Admiralty conference convened on 2 November 1914, Fisher replaced Prince Louis of Battenburg as First Sea Lord.²⁹¹ A further significant outcome of this conference was the Admiralty's decision to restrict merchant shipping by declaring the entire North Sea a military area. As with previous decisions, this declaration made it perfectly clear that from the British perspective, this measure was a response to German activities that contravened international law. This British declaration concerning the North Sea seemed to trigger a further tit-for-tat response from Germany and in November 1914, a memorandum by the commanders of the High Seas Fleet to the Chief of the German Naval Staff, Admiral von Pohl, was equally clear in its proposed course of action:

As England completely disregards International Law, there is not the least reason why we should exercise any restraint in our conduct of the war... We must make use of this weapon, and do so in a way most suitable to its peculiarities. Consequently, a U-boat cannot spare the crews of steamers, but must send them to the bottom with their ships. The shipping world can be warned... and all shipping trade with England should cease within a short time.²⁹²

The alleged disregard by the British Government of international law, related to the British declaration on 2 November, which classified the whole of the North Sea as a military area. The tone of the German memorandum also showed the more extreme views faced by the German Chancellor, Bethmann Hollweg as the internal battle for power simmered between the naval and military authorities, and the diplomats and economists. This battle was to continue and increase in its ferocity throughout the war. Parallels could also be drawn with Britain, more so on the diplomats' side, as the views of other nations both Allied and neutral became clearer and increasingly relevant to the shaping of the strategic political direction in which Britain was heading.

In the US, tensions were starting to rise as Britain's blockade continued. On 21 September 1914, King George issued a proclamation adding various additional items to the

²⁹¹ Prince Louis felt that his position as First Sea Lord was no longer tenable given his close links with the German royal family.

²⁹² Scheer, *High Sea Fleet*, p.222 cited in Gibson and Prendergast, *Submarine War*, p.26.

contraband list.²⁹³ As a result, Sir Cecil Spring-Rice, the British Ambassador in Washington, became involved in a series of exchanges which showed that although the US was still a friend, the effects of the blockade were beginning to put a strain on relations. On the one hand, President Wilson was telling Spring-Rice 'it is a source of real comfort and reassurance that this serious matter [definitions of contraband materials] is in the hands of real friends, on both sides... we mean to do the right and wise thing.'²⁹⁴ On the other, there were concerns about the US trading goods that came under the definition of 'articles used exclusively for war'. On 2 October 1914, the *Insoloid Fuse Company* of Denver wrote to Spring-Rice asking how they were expected, during the British blockade of Germany, to continue their business of importing German mining fuses, 'which has nothing whatsoever to do with the war in Europe'.²⁹⁵ This was a very small example of a perhaps naïve and certainly isolationist view taken by many US companies. It did however show that the US felt it had some influence over Britain as attempts were made to curb US trade in Europe. Trade to the US was not in fact as curtailed as some thought, as the following statistics prove.

Table 6: US Exports to Europe and Germany²⁹⁶

	Exports to Europe Overall(\$)	Exports to Germany(\$)
Jan-Sep 1914	874,000,000	156,000,000
Jan-Sep 1915	1846,000,000 (111% increase)	11,750,000 (92.5% decrease)
Sept 1914	90,000,000	96,000
Sept 1915	211,000,000 (134% increase)	2,378 (97% decrease)

The massive reduction in US exports to Germany was quite significant but, from a trade perspective, this was more than offset by the increase in exports to the other European countries shown in the table below. In reality, a large proportion of the exports to Scandinavia, especially to Norway, were probably destined for the Central Powers.

²⁹³ Foreign Office, *FO 115/1770 Foreign Office: Embassy and Consulates, United States of America: General Correspondence. Declaration of London. Nos. 1-200* (1914).

²⁹⁴ *Ibid.*, letter dated 1 Oct 1914.

²⁹⁵ *Ibid.*, no.50.

²⁹⁶ Trade Clearing House, *FO 902/4 Weekly Bulletin of Trade Information from Confidential Reports No. 35 (Jul 8 to Jul 14 inclusive) United States* (London, Foreign Office, 1916).

Table 7: US Exports to European Countries²⁹⁷

	Jan-Sep 1914	Jan-Sep 1915
Norway	8,682,000	32,541,000 (275% increase)
Sweden	9,673,000	66,452,000 (587% increase)
Netherlands	77,247,000	116,738,000 (51% increase)
Italy	43,618,000	183,723,000 (321% increase)

Policies Emerge – February 1915 to September 1915

On 2 February 1915, Admiral von Ingenohl,²⁹⁸ Chief of the Admiralstab hauled down his flag partially as a result of a loss of confidence in him following the action at Dogger Bank on 24 January 1915,²⁹⁹ but largely because of his failing health. His replacement was Admiral von Pohl and with the Kaiser's assertion that 'the main portion of the fleet must be preserved as a political instrument',³⁰⁰ von Pohl was forced to consider alternative strategies for the defeat of Britain. One such way was to interfere with British troop transports to France, a policy suggested by the Kaiser long before the war.³⁰¹ This new German policy was a clear challenge to Britain's strategic Continental policy of supporting France by means of the British Expeditionary Force. German intelligence reports indicated that large numbers of troops were crossing the Channel; one report received from Dunkirk on 1 February 1915³⁰² stated that 700,000 British troops had already crossed to France and that 200,000 more were soon to follow. This report was considered trustworthy enough for the information to be passed on to the Flanders flotilla in Zeebrugge. It is interesting to note though that at no stage was the use of submarines considered as a means of stopping the British Expeditionary Force's troop transports,

²⁹⁷ Ibid.

²⁹⁸ Admiral Frederick von Ingenohl (1857-1933).

²⁹⁹ Originally intended as an attack on the British fishing fleet at Dogger Bank, the action soon became a reverse for Germany after communications intercepts warned Beatty of the German intentions. The German cruiser *SMS Blücher* was sunk.

³⁰⁰ Naval Historical Branch, *X Home Waters*, vol.13, p.3.

³⁰¹ Matthew Stibbe, *Germany's 'last card'. Wilhelm II and the decision in favour of unrestricted submarine warfare in January 1917* in Annika Mombauer, and Wilhelm Deist, *The Kaiser, New Research on Wilhelm II's Role in Imperial Germany*, (Cambridge: Cambridge University Press, 2003), p.221.

³⁰² Naval Intelligence Department, *HS 3011* (1915).

probably due to the immaturity of tactical thought on the use of U-boats and in fact, no troop transports were torpedoed on their way to France.³⁰³

Germany's experimental policy of mining against British commerce had failed. This policy relied on mines laid in unannounced positions; the inevitable result of this was that neutral vessels were the most likely ones to discover the minefields. When Britain therefore announced that the North Sea was a military area and that it would regulate neutral traffic, the German mining policy was effectively neutralised. It was even turned to Britain's advantage by means of the greater control it gave the Royal Navy over merchant vessels as they were stopped and searched for contraband.

In the face of dwindling maritime options, and despite protests from Tirpitz that the blockade would only anger the US, the Kaiser made the following declaration on 4 February 1915:

1. The waters round Great Britain and Ireland, including the entire English Channel, are hereby declared a military area. From February 18 every hostile merchant ship found in these waters will be destroyed, even if it not always possible to avoid thereby dangers which threaten crews and passengers.
2. Neutral ships also incur danger in the military area, because in view of the misuse of neutral flags ordered by the British Government on January 31 and the accidents of naval warfare, it cannot always be avoided that attacks are intended to be made on enemy ships, may also be made on neutral ships.
3. Traffic northwards around the Shetland Islands, in the east part of the North Sea, and a strip of at least 30 miles in breadth along the coast of Holland is not endangered.³⁰⁴

The German justification for this was again concerned with international law and allegations of the misuse of neutral flags; the British response was to accuse Germany of violating international law:

Germany has declared that the English Channel, the north and west coasts of France, and the waters round the British Isles are a 'war zone' and has officially notified the United States Government that all enemy ships found in that area will be destroyed and that neutral vessels may well be exposed to danger. This is a claim to torpedo at sight, without regard to the safety of the crew or passengers, any merchant vessel under any flag. As it is not in the power of the German Admiralty to maintain any surface craft in these waters, this attack can only be delivered by submarine agency....[thus nullifying] the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent...

³⁰³ Holger Herwig, *Total Rhetoric, Limited War. Germany's U-Boat Campaign, 1917-1918* in Chickering, *Total War*, p.203.

³⁰⁴ Naval Historical Branch, *X Home Waters*, vol.13, p.29.

A submarine is, however, incapable of fulfilling any of these obligations. She enjoys no local command of the waters in which she operates. She cannot take her captures within the jurisdiction of a Prize Court. She has no prize crew which she can put on board a prize. She has no effective means of discriminating between a neutral and enemy vessel. She is unable to receive on board for safety the crew of the vessel she sinks. Her methods of warfare are entirely outside the scope of any of the international instruments regulating operations against commerce in time of war. The German declaration substitutes indiscriminate destruction for regulated capture.³⁰⁵

A further British response to the German war zone declaration was the Order in Council of 11 March 1915, which amongst other items, proclaimed that no vessel would be allowed to proceed to any German port. This brought condemnation from the US press, particularly as the Order studiously avoided the use of the term 'blockade' with all its connotations under international law. The mood of the US people was clear from the tone taken by the *New York Tribune*:

The details of the Order are of little consequence. Since Great Britain has undertaken to brush aside rights which neutrals enjoy under the existing code of international law it cannot matter very much whether the methods employed... are in themselves, light handed or are calculated to give as little technical inconvenience to neutral sufferers. The excuse given... is that it is a reprisal. That excuse may hold against Germany, but it cannot hold against neutrals.³⁰⁶

The *Times-Dispatch* went even further on the subject of embargoes against Britain:

The Orders in Council... in effect create a blockade of the whole German coast, without accepting any of the responsibilities of effectiveness and continuity that a legal blockade entails... The protest that will be made by this Government will be as strong as words can phrase it.

It is not conceivable, of course, that we should go to war with Great Britain over an issue of this kind, but... we could declare an embargo on grain and other food supplies that would damage England even more than her so called blockade would damage our commerce.³⁰⁷

At the time of this exchange of words, there occurred the most infamous casualty of the U-boat campaign, with the loss of the Cunard liner *Lusitania*, sunk by Schwieger's *U-20* on 7 May 1915. Schwieger claimed that he had sunk what he believed to be a troop carrier; such incidents fuelled the diplomatic rows.³⁰⁸

With the increase in blockade measures, it was becoming a more difficult time for neutral traders such as the US, so every opportunity was taken to glean some sort of advantage in the taut economic climate as a Mr Thorburn noted in a Foreign Office paper:

³⁰⁵ Admiralty, *CAB 1/11/21 Untitled - annotated by Winston Churchill* (1915).

³⁰⁶ 'Order in Council', *New York Tribune*, 16 March 1915.

³⁰⁷ 'Embargoes', *Times Dispatch*, 16 March 1915.

³⁰⁸ Halpern, *Naval History*, pp.298-302.

I have good reasons for believing that many American firms, individuals and corporations have been and are taking advantage of the complex conditions arising out of the war... The recent Order in Council prohibiting all trading with enemy countries, together with the American government's note of protest against it, opens up a prolific field for such claims.³⁰⁹

These complex conditions also included obtaining their shipments by other, circuitous routes. However, if discovered, the British Government simply declined from offering those companies further permits. Nevertheless, Britain did not want to alienate powerful friends and the British Government went to some length to explain its position to the US as this note from 1915 showed:

We recognise with sympathy the desire of the Government of the United States to see the European war conducted in accordance with the previously recognised rules of international law and the dictates of humanity. It is thus that the British forces have conducted the war hitherto... On the German side it has been very different....

Talks of German treatment of British POWS, German minelayers, sinking neutral vessels etc.... It may be said that the British naval authorities also have laid some anchored mines on the high sea. The answer is that they have done so; but they gave previous notice of the area where the mines were to be laid; the mines were anchored, and so constructed that they would be harmless if they went adrift, and no mines whatever were laid by the British naval authorities till many weeks after the Germans had made a regular practice of laying mines on the high seas.³¹⁰

This document alluded to similar wording in the original Hague Convention, especially over the anchoring and subsequent harmless nature of mines. It also distanced Britain from the German approach and tried to show that the use of mines was a reaction to German activities. A further attempt by Britain to provide evidence that the Germans were indeed operating contrary to recognised international law came in a closing remark from the same document:

There is one further point that causes His Majesty's Government much concern. Before the outbreak of this war, it had been declared by at least one German statesman that treaties were kept only as long as it was convenient to keep them. The experience of the war has proved that this is no academic opinion, but one on which the German Government act.³¹¹

This was an interesting statement because in it, Britain appeared to absolve itself from any wrongdoing by showing that the disregard of international law by Germany was premeditated and thereby provided a justification for Britain to make a similar move. It could even be seen as hypocritical of the British Government to consider such a statement,

³⁰⁹ Robert H Thorburn, *FO 115/1857 (Blockade Order in Council Paper 48): American claims against the British Government. Importance of taking steps now to prevent them.* (New York, 1915).

³¹⁰ Foreign Office, *CAB 1/11/36 Draft of a Possible Reply to the Suggestions of the United States Government for an Arrangement between Germany and Great Britain for the Conduct of the War* (1915).

³¹¹ *Ibid.*

given Lord Fisher's views over the efficacy of the Declaration of London. According to Hankey, he was sent for by Fisher (some time during 1911) and 'informed that I need not worry about these matters [the Declaration of London] any more because it was absolutely certain that all these agreements would tumble down as soon as the guns went off'.³¹²

The loss of the liners *Lusitania* and *Arabic*³¹³ gave rise to a sharp increase in the number of US diplomatic notes sent to Germany. Very soon, restrictions were placed on German submarine Commanding Officers in an effort to prevent the unnecessary sinking of neutral vessels; the very nature of attacks by submarines however meant that mistakes would always be made. Despite the restrictions, in August 1915, forty-two British merchant ships totalling 135,000 tonnes were lost to enemy submarines. Expanding this to include losses due to mines, the figures were forty-nine ships and 149,000 tonnes.³¹⁴ As a result of US protests against the continued loss of merchant vessels, on 27 August 1915, the Kaiser issued a proclamation that in future submarine Commanding Officers were not to sink passenger steamers, not even those of enemy nationality, in the prohibited zone, without warning and without saving the passengers. Three days later, this prohibition was extended to include 'small passenger steamers' until further notice. No definition of any kind was given for the exact type of ship to be considered as a 'passenger steamer'.

When Admiral Henning von Holtzendorff³¹⁵ became head of the Admiralstab in September 1915, he decided that the U-boat campaign was no longer being militarily effective due to the mass of restrictions placed on submarine Commanding Officers. On 18 September, he ordered that no attacks on merchant shipping would be made off the west coast of Britain or in the English Channel; in the North Sea, submarine warfare was to be conducted strictly in accordance with Prize Law. This order served to end the first German submarine campaign against commerce but it is worth noting the view of the official

³¹² Hankey, *Supreme Command*, p.99.

³¹³ In August 1915, the British passenger liner *Arabic* was sunk by a German U-boat. Forty passengers and crew were lost, including two Americans.

³¹⁴ Marder, *Dreadnought to Scapa Flow*, vol.2, p.345.

³¹⁵ Henning von Holtzendorff (9 January 1853- 7 June 1919).

historian of the blockade, Bell. During 1915, Washington and Berlin exchanged a number of notes regarding the use of submarines for warfare and commerce. The closing paragraphs of the section in Bell concerning these notes made a comparison of the German and British systems of blockade.³¹⁶ A leader from the *New York Tribune*, cited by Bell, summarised the situation neatly:

It is equally necessary to perceive that there is no parallel between our differences with Germany... and any disagreement we have with Great Britain. We have informed Germany that further wanton murder of American citizens will be viewed as an act deliberately unfriendly. A systematic effort will be made to procure equally vigorous language in dealing with Great Britain. This effort should fail and must fail, because no question of life divides Great Britain from us, and Sir Edward Grey has neither asserted the right of murder nor has he been asked by us to give assurance against murder. Our cases with Great Britain are purely civil...³¹⁷

The principal difference between British and German policies was therefore that Britain, in continuing with its measures against trade, was having no direct effect on human life. Germany on the other hand was in a downwards spiral of diplomacy whereby it was constantly trying to excuse or condone the deaths of people on board neutral ships sunk by U-boats. As Bell put it, 'the control established over German imports during the year 1915 was, assuredly, a far greater victory than anything achieved by the armies on the western front.'³¹⁸ Bell's view may have been realistic but was probably rather optimistic, especially as he represented the Official History. There were undoubtedly breaches of the blockade but these were slowly closed as the war and the blockade progressed.³¹⁹

Policy Failure? September 1915 to March 1916

With this first submarine campaign over, Germany moved into what Halpern described as the 'twilight' or 'restricted' phase of submarine warfare.³²⁰ This period marked a return to some of the more traditional forms of naval warfare with an increased use of surface raids and the employment of submarines in 'trap' operations to lure unsuspecting British warships towards waiting submarines concealed beneath the waves,

³¹⁶ Bell, *Blockade*, pp.421-446.

³¹⁷ Ibid., p.446.

³¹⁸ Ibid., p.449.

³¹⁹ Stevenson, *History*, pp.248-249.

³²⁰ Halpern, *Naval History*, p.304.

ready to attack them with torpedoes. The restrictions placed on submarine Commanding Officers were many. Halpern cited a number of amendments to such orders between November 1915 and March 1916 that covered the entire spectrum from the sinking of enemy freighters without warning to the sinking of armed enemy freighters and finally the sinking of all enemy freighters.³²¹

With Holtzendorff at its helm, the view of the German Admiralty appeared to be one inclined to a more strategic approach. Greater emphasis was now placed on the use of graphs and curves, with the amount of tonnage sunk becoming an important statistic. Holtzendorff worked closely with the army's Chief of the General Staff General Falkenhayn to ensure that the submarine campaign acted as a thorn in the side of Britain's ability to support its Continental strategy, particularly during the Battle of Verdun, which commenced on 21 February 1916.

A further hindrance to the British Government came during the first part of Parliament's autumn session in 1915 in the form of the Admiralty's (and the Asquith Government's) old protagonist Lord Charles Beresford, who represented some of the more extreme opinions over how to conduct the blockade against Germany:

Why on earth do we not let the fleet act? We have the command of the sea, and why do we not stick to the old usages and customs of the sea? Whenever the fleet takes three or four ships, the Foreign Office orders them to be let go, and the confusion is extraordinary... What is the objection to making it an effective blockade? We have got the mastery of the sea, why do we not use it?³²²

It is most unlikely that the parliamentary ranting of Lord Beresford alone would have caused the Government to feel intimidated in any way but it is likely that they added to the general feeling that greater organisation was required. Relations between the Royal Navy and the politicians were none too harmonious either. In December 1915, during a short trip to the Admiralty, Jellicoe failed to convince Lord Robert Cecil (Parliamentary Under-Secretary for Foreign Affairs) not to be over-solicitous towards the neutrals and wrote to Beatty about his frustration:

³²¹ Ibid.

³²² Bell, *Blockade*, p.450.

The truth is (don't breathe it) that Russia has less than 1,000,000 *armed* infantry. They say hostile action by Sweden would finish them. *We* and the French fear the Dutch, although I argued they would never go to war with us because of their trade. They also say that we and Russia are still absolutely dependent on the USA for munitions!!! All I could get was the concession that *when* Russia was in a better state we might re-consider the question... The French politicians, they say, are worse than ours. Is that possible?³²³

Notwithstanding all of the above, the organisation of the blockade improved with the creation of the Ministry of Blockade on 23 February 1916, under Lord Robert Cecil.³²⁴

Established on 1 February 1915 as the Intelligence Branch of the War Trade Department, the 'Trade Clearing House', acted as a clearing house for all forms of intelligence on war trade available in the various Government Departments. Its functions were twofold. As a clearing house, it collected, collated and distributed information received from every possible source. As an intelligence department, it studied questions affecting the policy and operations of the blockade; and economic resources, conditions and developments in various parts of the world. The information received included: reports and other communications from Government Departments, intercepted communications obtained through the censors, stories in the foreign press, communications from British traders and other similar material. The Trade Clearing House issued reports on firms, cargoes and commodities, and memoranda for the Contraband and Black List Committees. It also produced publications such as *Daily Notes from the Foreign Press*, *Who's Who in War Trade*, *Transit Letter Bulletin*, *Secret Weekly Bulletin*, *Summary of Blockade Intelligence* and economic sections of the *Peace Conference Handbooks*.

Despite the creation of the Ministry of Blockade, there remained those in the Navy who were still frustrated with the lack of a great offensive strategy. The Assistant Director of the Naval War Staff's Operations Division summed up the feelings towards the Admiralty in a letter (recipient not known) in 1915:³²⁵

³²³ Jellicoe, *Beatty MSS - Letter from Jellicoe to Beatty* (1915).

³²⁴ Edgar Algernon Robert Gascoyne Cecil, Viscount Cecil of Chelwood. 1864-1958. Called to the Bar 1887; Conservative MP, East Marylebone, 1906-10; Independent MP, Hitchin, 1911-23; Parliamentary under-Secretary, Foreign Affairs, 1915-18; Minister of Blockade, 1916-18; Assistant Secretary of State, Foreign Affairs, 1918-19.

³²⁵ Sir Herbert William Richmond (1871-1946).

We are content to sit like a tar-baby, taking the punches of the enemy and hoping that his fists will stick somewhere – feeble, wretched policy, but natural to people whose upbringing does not put them in contact with military thought. Sir H Jackson is an electrician and engineer, Oliver is a navigator – and he is the best of the lot – T Jackson (DOD) is a mathematician, Sir F Hamilton is a social success, Tudor is a gunnery expert, Lambert is nothing in particular; and upon my soul the only man who has any military education is the civilian, Balfour, as his predecessor Churchill was.³²⁶

Inevitably, Britain was not the only one to be wounded by the submarine campaign.

Neutral countries also suffered as their shipping tried to pass through the North Sea; the US in particular was steadfast in its efforts to remain neutral under President Wilson but the pressure was mounting, as more US lives continued to be lost at sea.

A New Compromise – March 1916 to July 1916

The Kaiser had ‘strong moral and political reservations about unlimited submarine warfare’³²⁷ and was unwilling to commit to unrestricted U-boat warfare, listening carefully to the counsel of his Chancellor, Bethmann Hollweg.³²⁸ The Chancellor was wary of the diplomatic repercussions of upsetting the US and opposed a policy of unrestricted submarine warfare. He believed that the likelihood of the US becoming involved in the war would have increased greatly if a policy of unrestricted warfare was followed, and any calculations about the endurance of an alliance would have been impossible to make.

Holtzendorff therefore proposed a difficult compromise:

All these possibilities are swept away if we declare unrestricted submarine war, and bring America and other neutrals in against us. There will then be a state of affairs (we ourselves will have created it) which will allow nothing but a war fought to the bitter end... Our task is, therefore, so to conduct submarine war that there will be no break with the United States: every loss inflicted on Great Britain will then be pure gain to us.³²⁹

The ‘sharpened’ period of submarine warfare that resulted from this position of careful compromise was however short-lived and marred by a number of incidents. One was the sinking of the *Sussex* on 24 March 1916, resulting in an ultimatum from the US, in which it threatened to sever diplomatic relations with Germany if the present methods

³²⁶ Arthur J Marder, *Portrait of an Admiral. The Life and Papers of Sir Herbert Richmond*, (London: Jonathan Cape, 1952), pp.202-3.

³²⁷ Holger Afflerbach, *Wilhelm II as supreme warlord in the First World War*, in Mombauer, *The Kaiser*, p.204.

³²⁸ A good discussion on the German politics and debates on unrestricted U-boat warfare can be found in Stibbe, *Germany's 'last card'*, p.219.

³²⁹ Bell, *Blockade*, p.591.

against passenger and freight vessels did not cease. As a partial result of this, the Admiralstab pronounced a strict return to commerce warfare under prize rules. Admiral Scheer then decided that the submarine warfare campaign was no longer tenable under such conditions and recalled all his submarines, gaining formal approval from the Kaiser for the cessation of the submarine war on commerce on 30 April 1916.

It was around this time that the *Zamora* judgment was made, one of the most important decisions ever made by a British Prize Court. The outcome of the *Zamora* case was Britain's final abandonment of the Declaration of London. The 'Maritime Rights Order in Council, 1916',³³⁰ repealed all previous orders that had put the Declaration of London into force. Specific indications were then made as to the manner in which the Government would apply old and recognised principles of consuetudinary³³¹ law to modern warfare. The case of the *Zamora* and its implications for international maritime law are the subject of a detailed case study in chapter six.

A Strategic Turning Point

The Battle of Jutland marked a turning point in naval operations in the First World War and in modern naval warfare, marking the only major clash between the two great Fleets of Britain and Germany. No encounter of such scale or significance was witnessed again at sea during the war and from this point onwards, Germany once more directed its efforts towards the role of the U-boat as a commerce destroyer. Halpern noted that in Britain the aftermath of Jutland focussed on the tactical details, whereas in Germany, it centred on the strategic employment of ships and submarines.³³² Strategically then, whilst the Battle of Jutland was a landmark in its own right, the battle can be seen more rightly in this context as a turning point in the war.

³³⁰ Bell, *Blockade*, Appendix I, p.717.

³³¹ An unwritten law established by usage, derived by immemorial custom from antiquity.

³³² Halpern, *Naval History*, p.327.

The war at sea was just one element of the First World War. Most academic and popular history work has rightly focussed on the land campaigns of the war. The naval side of the war has therefore been studied within the overall strategic context, which of course included the land campaigns. Lord Kitchener, as Secretary of State for War, believed that the war would be a long one and originally hoped to keep British troops away from major offensives in the Continental war in the expectation that the Germans would exhaust themselves in a series of assaults against the French and Russian armies. Kitchener made strenuous efforts to build up Britain's army through the introduction of the 'Pals' Battalions' and the 'New Armies' epitomised by the famous recruiting poster featuring Kitchener himself.³³³ Kitchener's plan was for France and Russia to withstand the worst of German attacks and wait until spring 1917 when Britain would intervene in a decisive way, thereby exerting a pivotal influence at the ensuing peace negotiations. This plan was in keeping with the theory of 'attrition' described by David French,³³⁴ in which the armies of the Central Powers could only be defeated by killing their soldiers although this method could only succeed at the expense of many Entente soldiers. Under Kitchener's plan, he intended that British soldiers make up the minority of those killed, not the majority. These long-war plans did not hold up however and pressure from France forced Kitchener to send his troops earlier than planned, where they took part in the Battle of Loos in September 1915. Events such as the German offensive at Verdun in early 1916, where the maximum advance was only five miles, and the Allied attacks at the Somme in the summer of 1916, reinforced the established view that only a long-war strategy could resolve the stalemate.

The Battle of the Somme was originally intended as a means to break through the German lines and end the stalemate in the trenches. By the end of July 1916 however, the British and French had lost over 200,000 men killed in the trenches. Likewise, the Battle

³³³ David French, *The Strategy of Unlimited Warfare? Kitchener, Robertson and Haig* in Chickering, *Total War*, p.283.

³³⁴ David French, 'The Meaning of Attrition 1914-1916', *The English Historical Review*, 103, no. 407 (April 1988), pp.385-405.

of Jutland was supposed to have been the great 'Trafalgar' in which the German High Seas Fleet would have been defeated. Although this result did not come about directly from Jutland, the indirect effect was that of a victory for Britain. The scale of the economic impact brought about by the stalemate in the trenches and the losses at Jutland rose dramatically as the war continued. It was therefore the middle of 1916 when the reality of the long war really set in throughout Europe.

4. Unrestricted economic warfare and US intervention: The realisation of a long-war

This chapter looks at the German moves towards a totally unrestricted economic warfare campaign and reviews the ways in which the U-boat threat was countered, both successfully and unsuccessfully.

Although there has been a necessary reliance on secondary sources in this chapter for some of the details regarding Germany's decision to adopt unrestricted warfare, it is a necessary part of the structure of the thesis. Every effort has been made to find a variety of German scholarly sources in English to balance the 'tainted' primary sources such as the memoirs of Tirpitz and Scheer.³³⁵ The technical details of the U-boats and the anti-submarine strategies employed by Britain and her allies have not been explored deeply as they have already been examined closely in the academic literature.³³⁶ It is however essential that they are at least mentioned, as they add to the completeness of the discussion on unrestricted submarine warfare and provide context for later chapters.

Return to 'Traditional' Employment for the U-Boats

As a major consequence of the Battle of Jutland, Scheer was wary of planning any further fleet action against the British Grand Fleet and turned instead to using his submarines in a more conventional military fashion, to reduce Britain's advantage of superior numbers. His plan was to use patrol lines of submarines, spread out across a large area in the North Sea on the most likely line of approach of any Grand Fleet incursions towards German waters. He preferred this approach to one where the submarines congregated off British ports as he found that this had been counterproductive in the past, with the submarines tending to get in each other's way. The culmination of Scheer's plan

³³⁵ 'Tainted' in this case, refers to the often-apparent lack of objectivity in memoirs; this can be applied equally to the works of Lloyd George, Churchill and others on the British side.

³³⁶ The use of submarines by Britain was used as a case study by Dash to examine British attitudes towards naval technology; in this, he noted Britain's failure to anticipate unrestricted submarine warfare. Dash, 'Submarine Policy'. See also Brown, 'Scientists and Admiralty'.

for using submarines in a more 'traditional' way came on 18 August 1916, when he took elements of the High Seas Fleet to sea. The Grand Fleet, alerted by Room 40³³⁷ intercepts sailed to engage Scheer but the whole event turned into a maritime version of 'Blind Man's Bluff'³³⁸ resulting in small losses on each side but ultimately nothing of immediate consequence. Although a seemingly insignificant skirmish when compared to Jutland, Halpern noted that the day had an important strategic result.³³⁹ On 19 August 1916, Jellicoe expressed his concerns to the Admiralty, stating that he had insufficient forces to provide adequate screening for the Grand Fleet if it was to conduct any sort of operations in the southern part of the North Sea. The Admiralty's response on 9 September did not provide Jellicoe with any satisfactory answer, simply noting that attempts were being made to supply the Grand Fleet with additional resources, but that commitments needed to be maintained in other areas. Jellicoe and Beatty were in full agreement when Beatty wrote to Jellicoe on 6 September 'when you are winning, risk nothing'. They agreed that the North Sea, south of latitude 55°30'N³⁴⁰ was no longer a safe place for capital ships and was in fact best left to submarines. On 13 September 1916, Vice Admiral Oliver, then chief of the Admiralty war staff, attended a conference onboard HMS *Iron Duke*, Jellicoe's flagship, where it was formally agreed that the main part of the Grand Fleet would not go any further south than 55°30'N in longitudes east of 4°E.³⁴¹ The argument for this decision was that these waters could not easily remain under surveillance by cruisers or submarines, thus leaving the Germans with plenty of opportunities to lay mines or plan submarine ambushes. The German use of submarines to support direct military operations therefore had a strategic effect on the operations of the Grand Fleet.

³³⁷ Room 40, named after its location in Room 40 on the first floor of the old Admiralty building, was formed in November 1914 as the cryptography department of the Naval Intelligence Division.

³³⁸ Halpern, *Naval History*, p.330.

³³⁹ Ibid., p.331.

³⁴⁰ A line approximately from Alnwick, Northumberland to halfway up Denmark.

³⁴¹ A line running north from Rotterdam.

Germany made strategic changes too. As Scheer was refining his plans for the use of U-boats as assets to his High Seas Fleet, it was decided to make use once again of the U-boat to attack British commerce. He later recalled:

The behaviour of the enemy after the battle of the Skagerrak showed clearly that he intended to rely entirely on economic pressure to secure our defeat and would continue to keep his fleet in the northern waters of the British Isles. Nothing but serious damage to his own economic life could force this opponent to yield, and it was from him that the chief power of resistance of the hostile coalition emanated. As English economic life depended on sea trade, the only means of getting at it was to overcome the Fleet, or get past it. The former meant the destruction of the Fleet, which, in view of our relative strength, was not possible. But so long as the Fleet was not destroyed, we could not wage cruiser warfare—which alone could have badly damaged British trade—on a large scale. The U-boats, however, could get past the Fleet. Free passage to the open sea had been gained for these in the naval action on May 31, for the English Fleet stayed far North and did not dare to attack our coast and stamp out the U-boat danger at its source.³⁴²

Scheer realised first, that economic warfare waged against British commerce was definitely a viable way of attacking the British war effort, and secondly that the freedom of the seas enjoyed by the U-boat made it the best equipped weapon available to him to undertake the task of economic warfare:

The recognition of this necessity to attack British trade as the only means of overcoming England, made it very clear how intimate was the connection between the conduct of the war by land and by sea.

The belief that we could defeat England by land had proved erroneous. We had to make up our minds to U-boat warfare as the only means we could employ that promised a measure of success. The ultimate decision was left to the Supreme Army Command...however, it did not seem advisable to the Supreme Command to begin an unrestricted U-boat campaign at once, in view of the fact that no additional troops were available in the event of neutral nations, such as Holland and Denmark, joining the enemy.³⁴³

The Dover Barrage

The safety of the Dover Straits was of vital strategic importance for Britain's Continental war effort. Throughout the course of the war, the Straits of Dover were made increasingly difficult for the U-boats to pass through. By the end of the war, it was virtually impassable. The existence of the Dover Patrol and the barrages it used to block the Straits from submarines had great strategic importance. The German destroyers of the Flanders flotilla attempted to harass the guardships of the Dover Patrol and interfere with their efforts to prevent U-boats from passing through the Straits of Dover and into the

³⁴² Scheer, *High Sea Fleet*, ch.11c.

³⁴³ Ibid.

English Channel. If not for the Dover Patrol, this route would have given the U-boats much swifter access to their hunting grounds to the west. The story of the Dover Patrol has already been the subject of much academic literature.³⁴⁴

German Plans for Unrestricted Warfare – the Holtzendorff Memorandum

Admiral Holtzendorff³⁴⁵ assumed the post of the Imperial German Navy's Chief of the Admiralty Staff on 3 September 1915. His appointment to this position was supposed to reinforce the idea that the Kaiser remained in overall control of naval policy, a function undertaken in reality principally by Tirpitz, the State Secretary of the Imperial Naval Office. Tirpitz soon won over Holtzendorff as an exponent of the submarine's effectiveness. Holtzendorff's appointment therefore achieved very little in improving the Kaiser's position amongst the leaders of the German navy. Neither did it resolve any of the ongoing strategic debates regarding the continued use of the U-boat against commerce.

At this point, it is worth going back to 1915 when, following the first and limited submarine campaign in February 1915, the potential use of the U-boat as a weapon for use in bringing to bear economic effects was slowly becoming apparent. Several people were crucial in bringing together the work that eventually brought about the German decision to conduct unrestricted U-boat warfare.³⁴⁶ A former bank manager, Lieutenant Dr Richard Fuss began to collect data on British trade as part of his work in Department B1 of the Admiralty Staff.³⁴⁷ The data collected by Department B1 came from a wide variety of sources (and supported the dictum that much important intelligence can be gained by reviewing open-source documentation). These sources included not only the *London Times*, the *Glasgow Herald*, the *Manchester Guardian*, the *Economist*, the *Spectator*, and

³⁴⁴ Halpern, *Naval History*, p.346; Reginald Hugh Spencer Bacon, *The Concise Story of the Dover Patrol 1915-1917* (London: Hutchinson, 1932); Mark Karau, 'Twisting the Dragon's Tail: The Zeebrugge and Ostend Raids of 1918', *The Journal of Military History*, 67, no. 2 (April 2003), pp.455-481.

³⁴⁵ Admiral Henning von Holtzendorff (1853-1919).

³⁴⁶ Herwig lists all the members of Holtzendorff's team in Herwig, *Total Rhetoric*, p.194.

³⁴⁷ This department comprised experts from a number of fields including financial, commercial, agrarian, and industry.

Hansard, but also specialist papers such as the *Corn, Seed & Oil Reporter*, the *Corn Trade News*, the *Liverpool Journal of Commerce*, and *Lloyd's Register*. Another important contributor to this work was Dr Hermann Levy, an economics professor from Heidelberg. Using information gathered from a British Royal Commission on Food Supply report from 1905, Levy looked at the high level of British imports and low levels of stocks of grain. In August 1915, Levy produced a paper for the German Admiralty in which he examined the prospect of conducting economic warfare against British trade. He divided the consequences into three areas. Firstly, the direct effect of sinking merchant vessels on the reduction of available tonnage for shipments, subsequent rising prices, shortages of goods etc. Secondly, he considered the indirect effects of economic warfare such as the congestion of harbours with merchant ships unwilling to sail and of course increases in maritime insurance rates. Finally, he considered the impact on some of the more vulnerable aspects of the British economy. Grain prices were higher than in Germany and this was interpreted as proof of the difficulty already associated with maintaining supply to meet the demand. If this could be exploited at a time when the supply was already reduced then Levy's analysis concluded that grain supplies could be an effective target for the U-boat campaign. Unfortunately, it has not been possible to obtain a copy of Levy's original work,³⁴⁸ but this passage taken from Offer illustrated Levy's thinking:

The Royal Commission on Food Supply also provided Levy with a mechanism that converted grain shortage into political collapse. He quoted a passage from the Commission's report: if wheat imports were cut off when domestic stocks were already exhausted, there would be a rise in prices, a dangerous panic, and a shortage so serious that the war could not be carried on. German Admiralty Staff files contain a printed flow chart (from August 1915) which describes twenty-five different ways in which the U-boat war would raise costs within the British economy. Its conception is reminiscent of the Campbell project of defeating Germany by means of bankruptcy. Levy also had a notion of the direct and indirect linkages of the blockade, but for him the rising price of corn and meat was to be the crux. He expected this mechanism to drive Britain into defeat.³⁴⁹

The combined research of Levy and Fuss, coupled with Holtzendorff's zealous approach to U-boat warfare was embodied in a paper finally produced on 22 December

³⁴⁸ Hermann Levy, *Die neue Kontinentalsperre. Ist Grossbritannien wirtschaftlich bedroht?* (*The new Continental barrier. Is Britain economically threatened?*) (Berlin, 1915).

³⁴⁹ Offer, *The First World War*, p.357.

1916: the Holtzendorff memorandum.³⁵⁰ This became the pivotal strategy document for Germany's declaration of unrestricted U-boat warfare in 1917.

Holtzendorff's arguments in favour of completely unrestricted submarine warfare revolved around two key assumptions. First, that the continued arming of merchantmen by Britain would cancel out any increase in efficiency and availability of U-boats if they continued to follow the standard rules of cruiser warfare. Second, that the poor wheat crop of 1916 would offer a window of opportunity to starve Britain into submission given the low stocks of grain that were generally maintained. Germany calculated Britain's available shipping tonnage to be some 20 million tons gross. Of this, 8.6 million tons were requisitioned for the war effort, half a million in coastal traffic, a million under repair (and therefore temporarily out of commission), and a further 2 million to support Britain's allies. This left a mere 8 million tons of shipping available for supplies to Britain. In reality, the figure was not very far from the German estimate; from July to September 1916, only 6.75 million tons of shipping was involved in traffic to Britain. Added to this were 900,000 tons of captured German and Austrian shipping, and a further 3 million from neutral carriers. This therefore left only 10.65 million tons of shipping to supply Britain.³⁵¹ If the U-boats sank enemy merchant shipping at a rate of 630,000 tons per month, Germany envisaged Britain would be forced to sue for peace within five to six months. This was predicated on the basis that there would be insufficient merchant shipping available to meet the grain import demands of the British economy whilst maintaining the required level of supply of war materials.

Whilst the Holtzendorff memorandum considered the spectre of US intervention in the war, it was dismissed rather summarily, in a move that with hindsight was catastrophic for Germany. In late 1916, German strategic thinking was concerned greatly with the land campaign following the failure of the Verdun offensive and other setbacks to the German

³⁵⁰ See Appendix 2. The Holtzendorff memorandum was carefully crafted over some sixteen months prior to its publication and many of the arguments on U-boat warfare in Germany during early 1917 were based on this document. Herwig, *Total Rhetoric*, p.199.

³⁵¹ Halpern, *Naval History*, p.337.

war effort such as the Russian resurgence at the hands of Brusilov,³⁵² the loss of Bitolj to the Serbs, and the fall of Gorizia to Italy. After the overthrow of Romania, the Army's supreme command seriously doubted whether it could hold out for another winter³⁵³ and was therefore much more receptive to alternative concepts, provided they bore the promise of the quick victory that seemed no longer attainable on land. Thus, by as early as October 1916 the generals had signalled their agreement in principle for Holtzendorff's scheme.³⁵⁴ At the same time, the public standing of both the Kaiser and the Chancellor Bethmann Hollweg was being eroded steadily. The public and the press attacked the Kaiser for his resistance to resuming U-boat warfare. The German parliament meanwhile seized upon remarks previously made by the Chancellor, in which he expressed interest in unrestricted U-boat warfare. The Chancellor's original intention however was to deflect criticism away from the Kaiser. Bethmann Hollweg was however convinced that the Army's supreme command and the Kaiser would continue to back him against any domestic opposition and thus spare him the need to commit to Holtzendorff's proposal for unrestricted submarine warfare. Highlighting the Chancellor's continued reluctance to commit to this strategy, Lundeberg made reference to the Pless Conference of 30 August 1916 where Bethmann Hollweg had cited convoys as an important defensive measure not yet available to the allies, adding 'England will sacrifice its last man and its last shilling before capitulating to German sea power.'³⁵⁵

The day following the submission of Holtzendorff's memorandum, Field Marshal von Hindenburg sent a rather tersely worded telegram to the Chancellor to the effect that the situation would be favourable at the end of January 1917 for Germany to make a return to unrestricted U-boat warfare and therefore pressed him hard for a political decision. The

³⁵² Alexsei Brusilov (1853-1926). The Russian Brusilov Offensive on the Eastern Front began on 4 June 1916 defeating the Austrian Fourth and Seventh Armies. The Austrians lost 1.5 million men (including 400,000 taken prisoner) and ceded some 25,000km².

³⁵³ Tirpitz, *Memoirs II*, p.190.

³⁵⁴ Herwig, *Total Rhetoric*, p.193. Matthew Stibbe also notes that Falkenhayn was an important convert. Stibbe, *Germany's 'last card'*, p.225.

³⁵⁵ Lundeberg, 'Critique', p.114 (footnote 62).

Army's insistence on U-boat warfare placed further pressure on the Kaiser, who, until then, had always been opposed to Holtzendorff's requests. Coupled with the Allied rejection of the German peace initiative in December 1916, the Kaiser began to waiver.³⁵⁶ The pressure increased further when other members of the royal family and courtiers spoke out against any opposition to a measure that they felt was bound to bring certain victory, and lobbied the Kaiser to acquiesce to Holtzendorff's request.

The final decision to commence unrestricted U-boat warfare, described by Holger Afflerbach as 'an act of stupidity'³⁵⁷ was eventually taken during a conference at Pless on 9 January 1917. The Chancellor was still not entirely convinced of the requirement to engage in a full-scale campaign of unrestricted warfare and made a rather weak attempt to stave off what was rapidly becoming inevitable. He eventually yielded to the collective bullying saying that if the military authorities considered the unrestricted U-boat war a vital instrument then he was not in a position to contradict them. The Chancellor's words were an obvious attempt to try to absolve himself from the repercussions of what was about to pass.³⁵⁸

Implementation of the Plan

On the most destructive day of the U-boat campaign, 19 April 1917, eleven British merchant ships (32,171 tons) were sunk by U-boats, with a further two ships (1,324 tons) sunk by mines. The table below shows the combined British, Allied and neutral losses to U-boats compared to the U-boat losses.

³⁵⁶ Afflerbach, *Supreme Warlord*, p.205.

³⁵⁷ Ibid.

³⁵⁸ The ultimate failure of the 1917 U-boat campaign was considered as an indictment on Bethmann Hollweg's failure to approve the campaign sooner. Lundeberg, 'Critique', p.114. See also Stibbe, *Germany's 'last card'*, pp.233-4.

Table 8: British, Allied and Neutral Shipping and U-Boat Losses³⁵⁹

1917	Number of Ships	Tonnage	Number of U-boats	Exchange Ratio by Numbers Ships: U-boats	Exchange Ratio by Tonnage (average U-boat =1000 tons)
January	161	293,479	10 (Jan-Mar)	54:1	98:1
February	237	467,751		79:1	156:1
March	289	510,587		96:1	170:1
April	395	840,469	13 (Apr-Jun)	99:1	211:1
May	281	551,041		70:1	137:1
June	292	633,191		73:1	158:1
July	227	494,999	20 (Jul-Sep)	32:1	70:1
August	182	490,036		26:1	70:1
September	155	316,140		22:1	45:1
October	153	429,263	24 (Oct-Dec)	19:1	53:1
November	116	259,608		15:1	34:1
December	151	353,162		19:1	44:1
Average (year)	220	469,977		50:1	107:1
Average (Jan-Jun)	275	549,420		79:1	158:1
Average (Jul-Dec)	164	390,534		22:1	52:1

It can be seen that April 1917 (in bold) represented the peak of destruction by the U-boats, with almost 100 British, Allied and neutral ships being lost for every U-boat sunk. In shipbuilding terms, the exchange ratio can also be seen as an economic comparator. With the displacement of a U-boat being somewhere between 300 and 1500 tonnes (dependent on class), the exchange ratio by tonnage makes the comparison even more stark. There was however a dramatic difference in the figures between the first and second halves of the year. In the first half, losses of ships to U-boats were rampant; in the second half, the losses reduced and more importantly, the exchange ratio of ships to U-boats fell by seventy-two per cent. In 1957, Sidney Pollard produced a useful essay on comparative costs of shipbuilding in the years leading up to the war.³⁶⁰ He showed how Britain managed to maintain its competitive advantage in shipbuilding up until the beginning of the First World War because of three factors: access to a large market and hence the opportunity for large scale production; cheap supplies of raw materials; and the skill and experience of management and men. As the war progressed, Britain's market reduced, raw materials became more difficult to obtain, and manpower was depleted by the war effort.

³⁵⁹ Source data: Admiralty, *TH 7 The Anti-Submarine Division of the Naval Staff. December 1916-November 1918*. (London, Technical History Section, 1919). Exchange ratio by tonnage calculated by the author.
³⁶⁰ Sidney Pollard, 'British and World Shipbuilding, 1890-1914: A Study in Comparative Costs', *The Journal of Economic History*, 17, no.3 (1957), pp.426-444.

The losses of merchant vessels to U-boats therefore exacerbated the problems of not only shipping availability but also production.

The exchange ratio can also be examined from another aspect by looking at U-boat construction figures. The table below (although missing figures from the beginning and end of the war) shows the overall size and changing profile of Germany's U-boat force. The peak of U-boat production was recorded on 1 January 1916 and it remained high for the rest of the war, once the benefits of the U-boat had been realised by Germany and initial construction problems overcome.³⁶¹ Losses increased dramatically in 1917, reducing the rate by which the overall total increased, but the overall trend was still upward. Such was the importance placed on the role of the U-boat that at the end of the war there were 224 U-boats under construction in German yards.³⁶²

Table 9: Gains and Losses to the U-Boat Strength during the First World War³⁶³

Year	Existing	Built	Sunk/Other	Gain
1 Jan 1915	29	52	27	25
1 Jan 1916	54	108	29	79
1 Jan 1917	133	87	78	9
1 Jan 1918	142	70	78	-8

British Efforts to Counter the Submarine Threat

When Jellicoe became First Sea Lord in December 1916, one of his first actions was to form the Anti-Submarine Division of the Admiralty, under Rear Admiral Alexander Duff. This new division was created with the aim of taking control of all the patrol and minesweeping vessels, and all the aircraft patrolling for submarines. One of Duff's first moves was to instigate 'hunting' patrols, comprising groups of destroyers and patrol boats. The hunting patrols, based out of Devonport and Portsmouth, were intended to remove the

³⁶¹ In his memoirs, Tirpitz cited a number of reasons for delays in submarine construction including: the opening of the submarine base at Wilhelmstrasse, ongoing design work on submarine motors, overstretch by the manufacturers engaged in contracts, and a lack of trained crews to take the submarines to sea resulting in U-boats 'clogging up' the dockyards. Tirpitz, *Memoirs II*, Appendix II, p.389.

³⁶² Robert M Grant, *U-Boats Destroyed. The Effect of Anti-Submarine Warfare, 1914-1918*. (London: Putnam, 1964), cited in J David Perkins, *German Submarine Losses from all Causes during World War One*, accessed 12 May 07. Available: <http://www.gwpda.org/naval/sml00001.htm>.

³⁶³ Ibid.

requirement for a warship on escort duty to leave its charges unprotected whilst it chased after a submarine in the event of an attack or detection of a submarine. With these new ships available in the approaches to British waters, no merchant vessel attacked by gunfire ought, in theory, to have very far to travel before a hunting patrol could assist. Naval officers considered these hunting patrols to be a good, offensive use of warships, greatly preferred to the more passive escort duties, not considered a fitting employment for a British warship. Despite the aggressive nature of the hunting patrols, their results were disappointing and other measures were considered. The defensive arming of merchantmen and the use of Q-ships³⁶⁴ increased but with more U-boats attacking without warning whilst submerged, this soon nullified any improvements in defensive arming. Indeed, U-boats now had sufficient experience to spot the tell-tale signs of Q-ships' armament from a distance e.g. seams for collapsible plates. At least sixteen Q-ships were lost to submarines in 1917. Much work was also carried out in the field of underwater acoustics, the fascinating story of which has been told in detail by Willem Hackmann.³⁶⁵ Used in an anti-submarine role, British submarines were often stationed astern of a merchantmen, able to creep up on the attacking U-boat whilst it was pre-occupied with its merchant prey. Depth charges were also subject to innovation at this time, with numerous mechanical devices invented to disperse bombs or shells across a target area; even dazzle painting was used,³⁶⁶ but still little consideration was given to the convoy system.

The Convoy System

The introduction of the convoy system was undoubtedly one of the most important factors in combating the U-boats. Many writers before have covered the story of the convoy³⁶⁷ albeit usually as part of general histories of the maritime war. This thesis

³⁶⁴ Merchant ships with hidden naval armament. Q-ships are discussed in more detail later.

³⁶⁵ Willem Hackmann, *Seek and Strike: Sonar, Anti-Submarine Warfare and the Royal Navy 1914-54* (London: HMSO, 1984).

³⁶⁶ David Burston, 'The Art of Combat', *The Sunday Times*, 3 March 2002.

³⁶⁷ For example, Halpern, *Naval History*, p.351; Hough, *The Great War at Sea*, ch.16.

therefore only covers the points relevant to its structure. For a variety of reasons, the Admiralty had resisted vigorously the old and traditional practice of convoy but desperate times required some desperate measures, and a few recalculations.

By April 1917, it was clear that the measures to reduce British and Allied losses were simply not effective in dealing with the U-boat menace. The Admiralty did not favour the convoy system but it eventually conceded to allow experimental convoys on a few minor routes. These routes were the Norwegian, Dutch, and French coal trade convoys. Losses to neutral Norwegian merchant vessels were forcing Norway to consider keeping its ships in port unless they received some sort of protection. Britain was however concerned that Norway's neutral status might be questioned if its ships were to travel under armed British protection. It was eventually agreed that armed trawlers would escort steamers on the Shetlands-Norway route. Unfortunately, heavy losses were still incurred and there were complaints about the lack of British warships available to assist. This led Vice Admiral Sir Frederick Brock, Admiral Orkneys and Shetlands, to call a conference at Longhope in Scapa Flow on 30 March 1917. After this and a subsequent conference, Admiral Beatty observed that providing an escort for each vessel was not possible and that a system of convoys was the only option available. Meanwhile, the Dutch convoys were instigated more as a response to the threat of raids from surface units in the Flanders flotilla, than submarines. Despite having German destroyer and submarine bases on its flanks, this convoy route was actually successful, using vessels from the Harwich force as escorts. Out of 1861 sailings, there were only six losses, which occurred before the system had been refined from a line of straggling vessels, to one of steaming in close formation. The Dutch and Norwegian convoys alone did not however provide sufficient evidence to convince the Whitehall sceptics of the benefits of the convoy system. Further evidence came in the form of the French coal convoys. France depended heavily on coal from Britain. Roughly half of the colliers were British and Allied, so when they were prevented from sailing due to the threat of submarines along the route, the German blockade was considered quite

effective. The French naval staff surmised that this meant a thirty to forty per cent successful blockade and drew up plans to convince the Admiralty that they should instigate convoys. Established on 22 January 1917, the first of four French coal routes saw colliers steaming in close formations escorted occasionally by armed trawlers. Previously, the threat of submarine attacks had made the U-boat blockade more effective by preventing sailings, but following the introduction of these convoys, the entire losses on the four coal routes were only fifty-three ships out of 39,352 sailings.

The Admiralty's stubbornness in rejecting the convoy was based on several flawed assumptions. First, that each vessel in the convoy would require a separate escort; the estimated number of escorts was therefore far too high. Second, that merchant ships would not be able to match the station-keeping abilities of their highly trained escorts and a convoy would have provided too big a target for the enemy. Finally, it was felt that the simple act of arming merchant vessels would provide sufficient defence against a U-boat as shown by the success of the Q-ships. Senior mercantile officers had also rejected the principles of convoys. After a detailed discussion with the Prime Minister in February, the Admiralty had still failed to produce any way ahead to combat shipping losses. Fortunately for the Admiralty, they had given the task of organising the French convoys to one Commander Henderson; he was a firm believer that the convoy system was viable and that the potentially large target offered by a convoy was no more vulnerable than any single ship would have been. The convoy served to bring the submarine to the destroyer rather than the destroyer hunting the Atlantic in vain for a glimpse of a periscope. The submarines had no option but to accept the bait offered by the convoy and accept the risk of subsequent attack. To assist with the convoy planning, Henderson required detailed shipping information. Through close liaison with the Ministry of Shipping, he calculated that the Admiralty's statistics for the numbers of vessels arriving and departing British ports were grossly misleading. These figures suggested that there were more than 2,500 arrivals every week, with over 300 ships requiring convoy daily. Based on these figures, it

came as no surprise that the Admiralty had rejected the convoy scheme based on numbers of escorts alone. Henderson discovered that the actual number of arrivals was only about 140 per week with just twenty vessels requiring convoys daily. With these figures providing justification, the Ministry of Shipping became a strong proponent of the convoy system. Despite Henderson's recalculations, the Admiralty stubbornly insisted that the station keeping of mercantile vessels, based on the evidence of a select group of senior mercantile officers, was not sufficient to allow safe convoys to proceed.

The Admiralty's support for the convoy system was vital and Lloyd George claimed in his memoirs that his actions alone had forced the Admiralty to change its opinion. 'The [Shipping] Controller reported this attitude [the Admiralty's] to me and I had to convey in peremptory terms my disapproval of their own conduct. They at last "consented to give effect to their own approval"'.³⁶⁸ This was typical of Lloyd George's dealings with the Admiralty. He felt that he could not make the Admirals see sense and believed that it was his ideas alone that turned the tide of the war at sea against Germany:

Naval science and strategy are matters very remote from the lay comprehension, and the aura of authority glistened round the heads of the Naval High Command. Whenever I urged the adoption of the convoy system, I was met, as I have related, with the blank wall of assertion that the experts of the Admiralty knew on technical grounds that it was impossible. That is a very difficult argument to counter.

A persistence of a few more weeks in their refusal to listen to advice from outside would have meant irretrievable ruin for the Allies. Neptune's trident would have been snatched out of Britannia's hands by the ravening monster of the great deep.³⁶⁹

Unable to deny the results of the experimental convoys, and despite its corporate reluctance, the first of the Admiralty's begrudgingly supported convoys sailed from Gibraltar on 10 May 1917 with sixteen ships supported by two Q-ships. Despite this first convoy arriving some twenty miles west of their planned rendezvous in British waters, it did not suffer any U-boat attacks. From this point onwards, although the convoy system was still embryonic, the submarine threat began to recede as the curves of the shipping loss graphs took an eventual and welcome downward turn. The mercantile masters had

³⁶⁸ Lloyd George, *War Memoirs I*, p.695.

³⁶⁹ *Ibid.*, p.695.

surpassed all expectations in their station-keeping and zigzagging abilities, and general attentiveness to signals. By early June, all the evidence thus accrued finally led to the decision to form a Convoy Section of the Admiralty. This decision was a particularly important one; not only was the Convoy Section to work closely with the Ministry of Shipping, but also with shadowy world of the Intelligence Division. The information provided by Room 40 had hitherto been a closely guarded secret, but now that information was made available to the convoy planners. Information from wireless intercepts, sightings and direction finding was used to plan the routing and, if necessary the diversion of convoys. By August, all homeward-bound ships from Gibraltar, the US and the South Atlantic, with a speed of less than twelve knots, were convoyed; fast convoys were introduced later. Naturally, the U-boats started to concentrate on the outward-bound ships. By August, the Admiralty had realised that outward-bound losses had just as great an effect on the available tonnage as inward-bound losses so these vessels were also convoyed. Providing the extra escorts required for the additional outward-bound (O) convoys as well as the homeward bound (H) convoys was a problem. A solution was for the escorts of the O convoys to escort their charges through the submarine danger areas then rendezvous with the next H convoy, their biggest priority. Despite the constant need for zigzagging and the precise timing required, the escorts continued to be a success. The number of sinkings outside fifty miles from land reduced drastically, thus increasing the chances of survival for the crews of attacked merchant vessels.

The US Joins the War

Under Woodrow Wilson, the US remained apart from the conflict in Europe, happy to maintain the role of a mediator. Wilson's close friend and advisor Edward Mandell 'Colonel' House embodied this role. House was the architect of Wilson's rise to the Presidency. He also travelled across the Atlantic and around Europe in an attempt to broker peace between the belligerent nations on Wilson's behalf. It was the sinking of the

Lusitania however that for House, marked a turning point in the US relationship with the belligerents:

It is now certain that a large number of American lives were lost [in the sinking of the *Lusitania*]... America has come to a parting of the ways, when she must determine whether she stands for civilized... warfare. We can no longer remain spectators.³⁷⁰

House believed that his vision of the nation state would produce a new international society, one based on the US idea of democracy. Although Wilson believed that mediation was required in order to end the war, House argued submarine warfare would soon bring the US into the conflict.³⁷¹ The German decision to adopt unrestricted warfare soon had diplomatic consequences. On 3 February 1917, Wilson severed relations with Germany. By the end of February, Wilson, through interception and disclosure by British Intelligence, learned of secret German-Mexican and German-Japanese alliances in the event of a war with the US, the Zimmermann Telegram.³⁷²

As the probability of US entry into the war increased, the anglophile US Admiral Sims was despatched to Britain for initial talks with the Admiralty. On 9 April 1917, Sims met with a very pessimistic Jellicoe who showed Sims that the losses reported in the press only represented some twenty-five percent of the actual losses. Without mentioning the potential use of convoys, Jellicoe explained that everything possible was being done to counter the U-boats and that there was no solution that he could see.³⁷³ Incidentally, in an undated letter, listing the reasons why Germany was winning the war, Fisher cited the top reason as 'Jellicoe.'³⁷⁴ It seems that at the meeting with Sims, Jellicoe's sole aim was to enlist US naval support, 'The only immediate remedy that was possible was the provision of as many destroyers and other patrol vessels as could be provided by the United States of America'.³⁷⁵

³⁷⁰ Charles Seymour, *The Intimate Papers of Colonel House* (Boston: Houghton Mifflin Company, 1926), pp.433-434.

³⁷¹ Bobbitt, *Shield of Achilles*, p.397.

³⁷² Katherine Bailey, 'The Zimmermann Telegram', *British Heritage*, 20, no. 4 (Jun/Jul 1999), p.15; See Appendix 3 for the British translation of the Zimmermann Telegram.

³⁷³ Lloyd George, *War Memoirs I*, p.690.

³⁷⁴ Fisher, *FISR 5/30 (4389) Handwritten notes by Fisher on Why the Germans are Doing so Well* (nd).

³⁷⁵ Lloyd George, *War Memoirs I*, p.690.

The Zimmermann Telegram and the increasing number of US vessels being sunk, (including the *Laconia* and *Algonquin*) caused the US to declare war on Germany (but notably not Austria and Hungary, Germany's allies) on 6 April. Wilson was also careful to distinguish between the state of Germany and its people, thereby maintaining his belief that only the system of governance needed to be changed:

The object of war is to deliver the fine peoples of the world from the menace and the actual power of a vast military establishment controlled by an irresponsible government. This power is not the German people but the masters of the German people.³⁷⁶

The vessels provided by the US were initially used as patrol vessels but as support for the convoy system grew, the US ships, under Sims' pro-convoy command, were used with ever-increasing effect in the job of convoying merchant vessels. The use of convoy and the additional US ships were instrumental in turning the tide against the effects of German unrestricted U-boat warfare.

Hoist with its own Petard – The Fate of the German Navy

The results achieved against the U-boat throughout the war show, in the table below, that for the first half of the war, U-boat losses were relatively light but began to increase from the middle of 1917 onwards:

³⁷⁶ Woodrow Wilson in a letter to the Pope, taken from Ronald Steel, *Walter Lippmann and the American Century* (Boston: Little Brown, 1980).

Table 10: U-Boat Losses During the First World War³⁷⁷

Period	Known Losses (*=Austrian submarines)	Possibly Seriously Damaged	Possibly Slightly Damaged
1914			
4 Aug-31 Dec	5	-	2
1915			
1 Jan-31 Mar	5	2	12
1 Apr-30 Jun	3	9	7
1 Jul-30 Sep	9+2*	13	11
1 Oct-31Dec	2	1	8
1916			
1 Jan- 31 Mar	3	15	13
1 Apr-30 Jun	7+1*	14	17
1 Jul-30 Sep	5	13	8
1 Oct-31Dec	10+2*	14	29
1917			
1 Jan-31 Mar	10	28	66
1 Apr-30 Jun	12+1*	56	106
1 Jul-30 Sep	20	45	78
1 Oct-31Dec	24	10	48
1918			
1 Jan-31 Mar	18+1*	10	42
1 Apr-30 Jun	26	17	84
1 Jul-30 Sep	21	10	40
1 Oct-Nov	23	-	2
Total	203+7*	257	573

Although the total in the table below does not quite tally with the table above, it gives an idea of the means by which the U-boats were lost:

Table 11: Summary of Causes of U-Boat Losses during the First World War³⁷⁸

Cause	Number sunk
Ramming	20
Gunfire	20
Explosive sweep	3
Aircraft bombs	1
Depth charge	30
Enemy torpedo	18
Own torpedo	2
Enemy mines	48
Own mines	9
Stranded	5
Unknown	19
Other	3
Total	178

German plans for a swift and decisive victory had been thwarted. Lundeberg noted that even as the effectiveness of the U-boat campaign began to decline from mid-1917

³⁷⁷ Anti-Submarine Division of the Naval Staff, *The Technical History and Index. A Serial History of Technical Problems Dealt with by Admiralty Departments* (London, Admiralty Technical History Section, 1919).
³⁷⁸ Grant, *U-Boats Destroyed*, cited in Perkins, *German Submarine Losses*.

onwards, Bartenbach,³⁷⁹ Michelsen³⁸⁰ and Scheer 'clung to the belief that this long-postponed offensive might yet have driven Britain to compromise peace, had the German will to resist remained firm'.³⁸¹ Lundeberg supported this view in light of post-war testimony by the likes of Churchill, Lloyd George and Jellicoe regarding Britain's apparently desperate position during the final U-boat offensive; this thesis shows later that Britain's position was not quite as desperate as was reported by these key protagonists. The disregard for the consequences of political isolation had, inevitably brought Germany to the brink of defeat. Herwig listed nine reasons why Holtzendorff's plan ultimately failed:³⁸² 'inexhaustible' lines of American credit for Britain; the elasticity of the British economy; the adaptive nature of the British national character; British use of alternatives to wheat; failure to destroy the domestic food supply of Britain; prioritisation of the production of pit props; underestimation of the shipping tonnage available to Britain; backfiring of the politics of unrestricted U-boat warfare and; the failure by Germany to mount the total effort required to conduct total war. A key member of Holtzendorff's team, Dr Fuss even conceded 'The U-boat war was never unrestricted'.³⁸³ The morale of Germany had been vested in the successes of the U-boats. When this was seen to fade, disillusionment and war-weariness spread. This was fuelled by far left elements within the country, whose seeds of insurrection found their way to the High Seas Fleet. Werner Rahn notes that the admirals and senior officers of the High Seas Fleet had underestimated the psychological leadership required of them.³⁸⁴ The mutinies³⁸⁵ that followed meant defeat

³⁷⁹ Korvettenkapitän Karl Bartenbach, Commander of the Flanders Flotilla of U-boats.

³⁸⁰ Commodore Andreas Michelsen relieved Hermann Bauer as the head of the German U-boat force (Führer der U-Boote or FdU) from June 1917 until the end of the war.

³⁸¹ Lundeberg, 'Critique', p.114.

³⁸² Herwig, *Total Rhetoric*, p.200.

³⁸³ Cited in Ibid, p.206.

³⁸⁴ Werner Rahn, *The German Naval War in 1914-18: Strategy and Experience* in Hugh Cecil and Peter H. Liddle (eds), *Facing Armageddon. The First World War Experienced* (London: Leo Cooper, 1996), p.128.

³⁸⁵ Herwig, *Luxury Fleet*, pp.249-53; Paul Schubert and Langhorne Gibson, *Death of a Fleet, 1917-1919. An Account of the Mutinies in the German Navy*. (New York: Coward McCann, 1932); Daniel Horn, *The German Naval Mutinies of World War I*. (New Brunswick: Rutgers University Press, 1969); Roger Chickering, *Imperial Germany and the Great War, 1914-1918*. (Cambridge: Cambridge University Press, 1998), p.183.

for the German navy not only by British measures, but also by the actions of its own sailors.³⁸⁶ The U-boat threat had been defeated.

³⁸⁶ Rahn, *German Naval War*, p.132.

5. The reality of economic warfare and the effects on resource availability

Britain's blockade of Germany and the German attacks on British shipping had far-reaching effects that began almost immediately. In addition to the obvious shortages in supplies that developed due to reduced shipping, other effects soon emerged. In both countries, domestic consumption of goods increased, thus reducing the amounts potentially available for export. Shortages forced administrative changes, with many new committees for control and distribution of goods formed both in the long term and in the short term. This chapter concludes the review of the conduct of the war and the second part of this thesis; it investigates the effects of the blockade from an economic point of view in order to demonstrate the far-reaching consequences of the disputes in international law and their manifestation in the form of the British blockade and German U-boat campaign. It does so first by looking at some of the general issues of economic warfare before moving on to consider a number of case studies, which demonstrate the effect of the blockade on the economies of Britain and briefly, on Germany.

The Effects of the Blockade

Blockade, in its simplest terms, is the denial of commerce and resources. During the First World War, the blockade manifested itself in several forms. First, there was the denial of seaborne trade by the forces of Britain and her allies. This method of blockade derived from the traditional practice discussed in the first chapter, whereby a fleet literally blockaded the coastline of an enemy state in order to prevent its commercial traffic from going about its normal peacetime business. Britain implemented this strategy initially by using the close blockade but when found to be completely impractical and hazardous to the blockading force, a strategy of more distant blockade was adopted. Ultimately, the blockade was carried out largely by the use of mines in order to make certain stretches of water on the approaches to German ports impassable to both military and merchant traffic.

The other method of blockade was the one adopted by Germany. It came in two distinct parts: the threat of destruction, and the actual physical destruction of commercial shipping. The threat was embodied by the notification of large war zones; the actual destruction involved the physical interdiction of belligerent and neutral shipping by German naval forces. The prime instrument in this case was the German U-boat, a vessel of war that entered the First World War with no clear role other than perhaps as a covert scouting vessel. By the end of the war, the submarine was a fully-fledged participant in naval warfare on both sides. The greatest and longest lasting impact was made by Germany's U-boats.

The end result of a maritime blockade is effectively the same – a reduction in the amount of shipping available for transporting cargo by sea. This could mean imports, exports or simply inter-port transfers. In order to investigate the economic effects of the blockade, three separate case studies have been conducted, each for different commodities, namely coal, wool and wheat; each of these had their own part to play in the war. With the reduction in goods available from the import market there were inevitably going to be shortages, so the Governments of the various countries involved needed to make the most of the resources available to them. This could be done by reducing exports, which would have the effect of making commodities available for the home market instead. In cases where such commodities were only available through imports or were only home-produced in limited quantities, some form of rationing needed to be introduced.

A further consideration to weigh up alongside the economic effects was the actual effect that shortages of commodities had on the continued war effort, for example supplies of oil fuel or coal for warships.

Economic Case Study 1: The Supply of Coal During the First World War

Most of the figures used in this section have come from William Notz's³⁸⁷ account of the coal situation during the First World War. This was produced in June 1918, so figures for 1918 production were not available; hence the figures for 1918 coal production in the US, Germany and France have been gathered from other sources noted in the table. The data available covered the period for the years 1913 to 1918 for many countries and certainly gave a fair indication of trends in the production and distribution of coal. Prior to the war, world coal production amounted to approximately 1.5 billion tons. Of this, the US was by far the largest producer, accounting for thirty eight percent of total output. Britain and Germany meanwhile were close with twenty and fourteen per cent of output respectively. As the table below shows, as the war progressed, the amount produced by the US increased further and that by Britain and Germany followed a general decrease.

Table 12: Coal Production in the Leading Coal-Producing Countries of the World³⁸⁸

Short tons	1913	1914	1915	1916	1917	1918
US	570,048,125	513,525,477	531,619,487	585,372,568	621,409,629	678,211,904 ³⁸⁹
Britain	287,698,617	265,664,393	253,206,081	256,348,351	248,473,119	254,500,000 ³⁹⁰
Germany ³⁹¹	211,147,732	178,034,300	161,896,462	175,465,914	184,912,722	174,429,742
Austria-Hungary	59,647,957			30,896,388	28,558,719	
France	40,843,618	29,786,505	19,908,000	21,477,000	28,960,000	24,900,000 ³⁹²
Russia	35,500,674		27,820,632	13,622,400	13,266,760	
Belgium	22,847,000		15,930,000			
Japan	21,315,962	21,293,419	20,490,747	22,901,580		
India	18,163,856		17,103,932	17,254,309		
China	15,432,200		18,000,000			
Canada	15,012,178	13,637,529	13,267,023	14,483,395	14,015,588	
Spain	4,731,647	4,424,439	4,686,753	5,588,594		
Holland	2,064,608		2,333,000	2,656,000		

³⁸⁷ William Notz, 'The World's Coal Situation During the War: I', *The Journal of Political Economy*, 26, no.6 (Jun. 1918), pp.567-611.

³⁸⁸ Ibid.

³⁸⁹ Education Bureau of the IWW for Coal Mine Workers' Industrial Union no. 220 IWW, *Coal Mine Workers and their Industry* (Chicago: The Industrial Workers of the World, 1922).

³⁹⁰ DTI, *Historical Coal Data: Coal Production Since 1853*, accessed 18 Feb 07. Available: <http://www.dti.gov.uk/files/file18938.xls>.

³⁹¹ All figures for Germany in this row are taken from: National Bureau of Economic Research, *Germany Coal Production, Total Jan 1901-Jan 1924*, accessed 18 Feb 07. Available: <http://www.nber.org/databases/macrophistory/rectdata/01/m01119b.dat>.

³⁹² National Bureau of Economic Research, *France Coal Production 1870-1918*, nd. Available: <http://www.nber.org/databases/macrophistory/rectdata/01/a01214.dat>.

By the end of 1917, US coal production was up to 109 per cent of its pre-war level whereas both Britain and Germany were on a slow decline at about 80-85 per cent. Offer however contradicted this with evidence of German coal production in 1918 saying that German miners dug more coal in 1918 than they did in 1914.³⁹³ Notz discussed a number of factors affecting a country's ability to produce coal and some of these areas have been reviewed.

Distribution of Coal

The first problem of coal supply in time of war was that of distribution. Once physically extracted from the ground, the coal needed to be distributed to the market. During wartime, the demands made on the resources of the rail network for the movement of people and supplies were high.³⁹⁴ The problem of rail distribution was no different in Britain than it was in Germany. Notz noted:

An official communication recently issued by the German government states that the inability to meet the demand for coal is solely due to lack of transportation facilities. Limitation of passenger traffic is suggested as a means of meeting the difficulty. Enormous stocks of coal at the mines, it is claimed, cannot be moved due to rolling stock shortage.³⁹⁵

In Britain, the US and France, a system of zoning was introduced whereby the countries were divided up into zones of supply that matched the production areas to the users. As a further measure in Britain, domestic users were encouraged to maintain their coal stocks throughout the summer in order to reduce the bulk buying often associated with the approach of winter. Although wartime demands on the British and German economic infrastructures drove these factors of supply, there was no direct correlation between internal distribution problems and the use of blockade on either side.

Britain did have to increase its exports to its ally France, and for most of the war, nearly all French coal imports came from Britain. In 1914, France was one of the world's biggest importers of coal, with imports from Britain numbering fifteen million tons,

³⁹³ Offer, *The First World War*, p.51.

³⁹⁴ no author, 'Congestion on the Rail Network', *Board of Trade Journal*, (24 January 1918), p.92.

³⁹⁵ Notz, 'Coal Situation I', p.4.

increasing to eighteen million by 1917.³⁹⁶ These extra imports from Britain went some way to offset the shortfall in coal production from the loss of its coal-producing regions to Germany in August/September 1914. This situation was however due to the land war and not the blockade.

The Problems of Manpower

Another major factor in the supply of coal soon emerged relating to the first stage of the extraction process, namely the availability of trained miners. In the early days of the war, the physically fit and hard working miners were obvious choices for recruitment into the armed forces, especially the Army, and as a result, the available pool of labour for coal production reduced, with the resultant effect that coal production suffered. This dip in the available manpower happened in both Britain and Germany and as a result, many miners were de-enlisted in order to return to the work of coal extraction, essential to the war effort. The option of returning manpower to the mines was not however the only measure required. During the war, other industries were also in competition for manpower. The miners, unlike soldiers, could not be compelled to stay working in the mines and other industries soon became more attractive to the miners, as they paid higher wages. Around the world therefore, miners' pay increased in order to keep them in the mines. Britain, introduced the 'war wage' with liberal provisions on 17 September 1917³⁹⁷ and the US introduced a wage increase of forty-five cents per ton on 27 October 1917. The problem of pay, although a significant factor in coal production, was not affected directly by the blockade. Strikes by the miners still took place but often due to factors such as rising prices (especially of food), contempt for profiteering, a lack of railway wagons to remove the coal, fatalities due to inexperience, and a slackening of safety standards in order to increase coal production.

³⁹⁶ France was also the Entente's most important producer of heavy munitions and supplied the US expeditionary force with most of its artillery, so it was crucial to keep her supplied with industrial fuel such as coal.

³⁹⁷ Notz, 'Coal Situation I', p.5.

Coal Prices

A direct repercussion of the increase in wages was an increase in the price of coal. Any piecemeal methods to restrict coal suppliers' prices to maximum values and reduce profit margins were doomed to failure and as a result, state control of coal prices became necessary. With the introduction of the zoning system mentioned earlier, regional suppliers were unable to continue with their pre-war contracts and as a result, all coal supply contracts were terminated. As an example of the increase in coal prices, the table below shows the change in price per ton of coal at Cardiff:

Table 13: Changes in Coal Prices at Cardiff³⁹⁸

Year	Price/ton	% increase since 1914
1914	17s 6d	0
1915	20s 11d	20
1916	24s 5d	40
1917	26s 11d	54
1918	30s 9d	76

These price increases were however a result of the increased transportation and labour costs associated with the movement and extraction of coal during the war, rather than Germany's U-boat campaign.

Export of Coal

The blockade did however have an effect on the export of British and German coal, as Bell was to note:

On 20th January, 1915, the price of coal rose by two shillings a ton; by the middle of February, it was nine shillings above its pre-war price, notwithstanding that more coal was raised during that quarter than had been raised since war began. Early in April, the Welsh miners gave three months' notice on their agreements; this synchronised, roughly, with a demand from the miners federation that wages should be increased twenty per cent., and with threats of an early strike from the leader, Mr Smillie. In March, however, a committee convened by the Board of Trade presented their report: they recommended, amongst other things, that the export of coal should be controlled, in order to ensure an adequate supply to the war industries and the people; and that licences for export of coal should be granted by a special committee. The export of coal was therefore regulated by a new decree, issued on 13th May, whereby export was forbidden to all foreign countries, but allowed to countries in the British Empire. This decree, which was issued for reasons purely domestic, was the starting point of a great coercive system.³⁹⁹

³⁹⁸ G.J.R. Williams, *The Rhondda - Coal Prices 1840-1938*, nd. Available: http://www.therhondda.co.uk/facts/coal_prices_1840_1938.html.

³⁹⁹ Bell, *Blockade*, p.346.

With coal being included on the Declaration of London’s lists of contraband, its export during time of war was prohibited. There was such an outcry amongst ship owners that coal was swiftly removed from the list.⁴⁰⁰ Supplies of coal were however made the subject of draconian controls. Bell pointed out that there was a view in the British Government that by limiting the supplies of coal, leverage could be applied to other countries, especially the Scandinavians. From the beginning of the war, Scandinavia had been the weak link in Britain’s blockade strategy, as demonstrated by a report from the returning British Naval Attaché in Denmark:

In a very short time after the outbreak of war, goods of all sorts began to arrive in Scandinavia from all parts of the world, even from England, in enormous quantities, and all these went to Germany. This traffic continued unchecked until about August or September 1915; in fact, during one year our sea power so far as economic pressure was concerned was completely undermined and ineffective. The traffic was so great that goods landed could not be stored on the wharves and they overflowed into large open spaces and even the streets of the large Scandinavian ports.⁴⁰¹

Given the high levels of stocks of coal already held in Scandinavian countries such as Norway, there was also a risk that British plans could backfire and the Scandinavian countries would try to obtain their coal from the US, or even Germany if imports from third parties were to continue unhindered. The question therefore arose about how effective the restriction of coal exports would actually be against Germany. In those countries whose imports of coal arrived by sea, Britain enjoyed a great commercial advantage over Germany. It was only where German coal could be shipped by river that Germany was able to maintain an export supply, as the table below shows.

Table 14: British and German Coal Imports⁴⁰²

Country	Coal imported from Britain (tons)	Coal imported from Germany (tons)
Netherlands	2,018,401	7,217,606
Denmark	3,034,240	316,069
Norway	2,298,345	Insignificant
Sweden	4,563,076	184,707
Switzerland	Insignificant	2,290,854
Greece	727,899	Insignificant

⁴⁰⁰ Ibid., p.345.
⁴⁰¹ Captain M.W.W.P. Consett, *ADM 1/8468/225 Statement and Report by Captain Consett on Return from Duty as Naval Attaché in Scandinavia* (1917).
⁴⁰² Bell, *Blockade*, p.346.

Bell did not give a date for the figures used in the table above but a reasonable estimate would place the figures around 1914-15, i.e. from the start of the war to the point at which the Government considered control of exports. Bell then went on to say that the statistics available did not provide sufficient evidence upon which ministers could make any informed decisions. Despite the fact that German coal production was said to have fallen by thirty per cent, Germany was known to have started building its own stocks, with the intent of bargaining with other countries. Given the British considerations for potential cuts in exports to Scandinavian countries, it was therefore to Germany that these Scandinavian countries would most likely turn for coal. The role that Scandinavian countries played in supplying Germany during the war is a subject that has not been covered in depth here, and would certainly be a topic worthy of further research.

The credit for introducing an effective system of coal controls must go to the Admiralty, specifically the Trade Division. The job of patrolling the North Sea lay with Admiral de Chair.⁴⁰³ From his patrol work, he observed that an increasing number of vessels were consistently avoiding his patrols and furthermore, vessels could easily avoid patrols by continuing their passage within Norwegian territorial waters. The Trade Division therefore considered a scheme that would give them greater control over the neutral traffic, primarily in and around Scandinavian waters. This became known as the bunker control system. Bell⁴⁰⁴ noted that this was one of the most effective coercive measures of the entire system of blockade. In late 1915, the first step taken was to refuse bunkering to vessels carrying herrings to Germany, who usually bunkered at the Tyne or in Sunderland. This step was followed by a more comprehensive plan, supported by the Foreign Office, and was executed by means of a memorandum as follows:

⁴⁰³ De Chair, Sir Dudley Rawson Stratford (1864–1958). Commander of the 10th Cruiser Squadron 1914-16, he then went on to be a naval advisor to the Ministry of Blockade.

⁴⁰⁴ Ibid., p.347.

- (i) That no coal would be supplied to any vessel trading with a German port, or to any vessel carrying goods of enemy destination or origin.
- (ii) That no coal would be supplied to a vessel chartered to an enemy subject or a blacklisted firm.
- (iii) That, in order the better to perform the conditions imposed, all vessels supplied with British bunker coal were to receive approval for the cargoes carried from a neutral to a neutral port; all vessels supplied with British bunker control were to secure certificates of origin for all cargoes exported from Scandinavian countries; all vessels supplied with British bunker coal were to refuse cargo space to goods consigned to order.⁴⁰⁵

In the non-European field of coal supply, Britain’s dominance of the market remained unshaken as the table below demonstrates.

Table 15: Imports from Britain and Other Sources⁴⁰⁶

Country	Coal imported from Britain (tons)	Coal imported from other sources (tons)
Azores	22,608	Negligible
Madeira	131,751	Negligible
Canary Islands	1,114,629	Negligible
Brazil	1,886,871	Negligible
Uruguay	723,926	Negligible
Argentina	3,693,752	Negligible

Bell noted that for each of the countries in the table above, at least two thirds of the coal supplies were steam coal for steamers that bunkered in the Atlantic, or at the grain and meat ports. One of the key reasons for Britain’s stranglehold on the coal market was that the majority of the bunkering plants, coal lighters, tugs etc were all in the hands of British firms such as Cory, and Wilson and Wilson. Despite the US being a market leader in the supply of coal, US coal was not considered to be a rival to British bunker coal due to the low calorific value of the US fuel. This in turn led to British coal, with its higher calorific value, being favoured when calculating the amount of coal to be carried by ships and weighing this against the tonnage available on board for the carriage of goods and cargo.

Although it has been difficult to quantify fully the effects of the bunker controls, Bell did record that some figures supported the success of this particular measure. By looking at the shipping companies that signed up to the agreement of bunker controls, it appeared that seventy per cent of all Scandinavian shipping had agreed to the measures, the remaining thirty per cent most likely being involved in coastal and Baltic shipping and

⁴⁰⁵ Ibid., p.348.
⁴⁰⁶ Ibid.

therefore not affected. From the Admiralty perspective, when the controls were first introduced in October 1915, fewer than 200 vessels were passing the northern patrol. Of these, one third offered themselves voluntarily for examination, half were intercepted and examined, and the remainder escaped. By the time the system was fully operational in 1916, the proportion of traffic calling in voluntarily increased to about seventy-five per cent of the total and the amount evading the patrols was estimated to be two to five per cent of the total.

The blockade therefore had a significant effect on the way in which Britain managed its export and control of coal supplies, and at the same time vastly reduced the market available for German coal by restricting the available shipping. The only significant point to note here, however, was that because of British restrictions on coal supply to Sweden, German coal exports actually increased to around 200,000 tons per month by the end of 1915, a figure in excess of the pre-war market from Germany to Scandinavia.

Economic Case Study 2: The Supply of Wool During the First World War

The wool trade was complicated, involved many different stages of production and used a great variety of sources. There were two main branches in the wool trade: woollen and worsted⁴⁰⁷ manufacture. In general terms, the woollen manufacturers bought the raw material and sold the finished cloth, performing all the operations in their own mill, whilst worsted manufacture was carried out in a large number of mills, each specialising in one particular process. The raw material itself was more than just 'wool'. As an example, an Australian price list contained 848 separate classes of wool.⁴⁰⁸ The industry also dealt with camel hair, goat hair, mohair, cashmere, alpaca, human hair and other animal fibres of a similar texture.

⁴⁰⁷ Manufactured originally in Worstead, England, since the eighteenth century, worsted wool is made of long-staple fibres that have been combed to remove unwanted short fibres and make them lie parallel. The fibres are then twisted and woven tightly in order to inhibit creasing.

⁴⁰⁸ Dorothy M. Zimmern, 'The Wool Trade in War Time', *The Economic Journal*, 28, no.109 (Mar. 1918), p.8.

In Britain, the main seat of the wool industry centred on the West Riding of Yorkshire between the Rivers Aire and Calder. Other parts of the country maintained their own areas of expertise. For example, the flannel industry extended over the Pennines down to Rochdale and Oldham. West of England cloth was produced in factories throughout Somerset and Gloucestershire, with a dominant area around Stroud. The following table, taken from Zimmern’s article, gives a breakdown of the percentages of wool production in Britain on 30 August 1917.

Table 16: Breakdown of British Wool Production in 1917⁴⁰⁹

District	Workers %	Firms %	Woollen Spindles %	Worsted Spindles %	Looms %
Yorkshire	73.5	72.1	65.8	92.3	73
Lancashire	4.6	4.3	9.3	0.1	6.8
Midlands	2.5	1.6	1.2	3.4	0.6
West of England	2.6	1.8	5.3	0.7	2.4
England Total	83.2	79.8	81.6	96.5	82.8
Wales	0.5	3.7	1.4	-	0.9
Scotland	9.3	11.5	14.4	2.7	9.6
Ireland	1.5	3.0	2.1	-	1.1
Carpet Trade	5.5	2.0	0.5	0.8	5.6

From the table above it can clearly be seen that it was England, and in particular Yorkshire, which controlled the British wool industry. When investigating the price of wool, those for worsted wool are used because the production can be separated into distinct processes (wool merchanting, top making and combing, yarn spinning, manufacturing, and dyeing and finishing). The costs for each of these processes are identifiable whereas the composite nature of normal wool production prohibits the breakdown and attribution of costs. The table below shows percentage increases in wool prices over July 1914.

Table 17: Percentage Increases in Wool Prices during the First World War⁴¹⁰

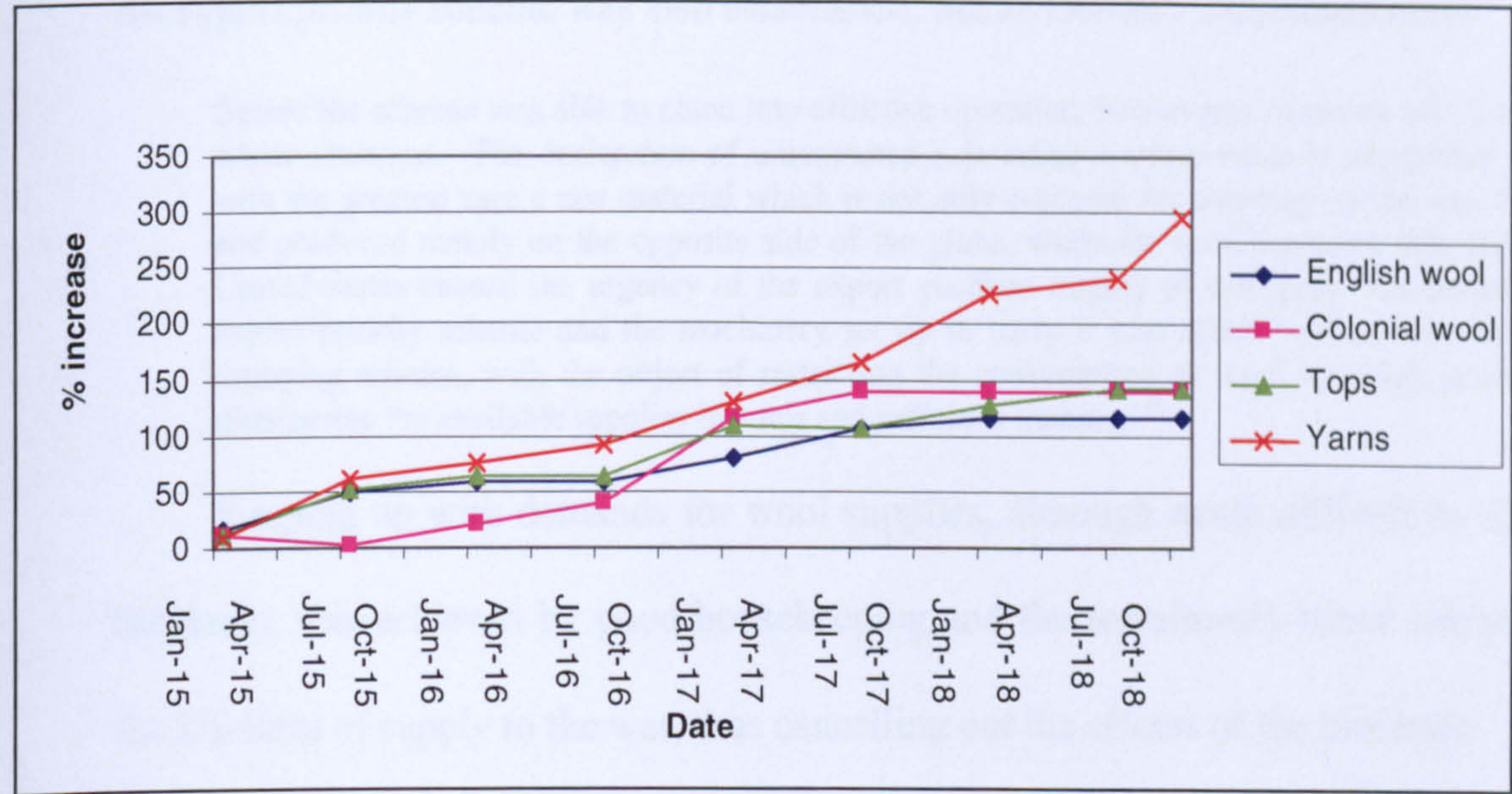
Commodity	Jan 1915	July 1915	Jan 1916	July 1916	Jan 1917	July 1917	Jan 1918	July 1918	Oct 1918
English wool	17	50	59	58	80	106	117	117	117
Colonial wool	13	3	21	41	115	139	139	139	139
Tops	13	51	65	63	109	106	127	142	142
Yarns	9	62	76	92	131	166	228	241	295

⁴⁰⁹ Ibid.

⁴¹⁰ A.S. Firth, 'An Analysis of the Increased Cost of Clothing Materials during the Period July, 1914, to October, 1918', *The Economic Journal*, 28, no.112 (Dec. 1918), pp.452-456.

One of the most striking comparisons in the table above was the difference in percentage increase between English wool (117%) and yarns (295%). Firth⁴¹¹ suggested that this was due to profiteering in the intermediate process of spinning. Looking graphically at the data above, there was a steady increase in all prices throughout the war but it was not until mid 1917 that the cost of yarns really took off.

Figure 2: Percentage Increases in Wool Prices During the First World War



In order to put these prices into perspective, the source of the wool requires consideration. In the five years preceding the war, Britain’s annual consumption of raw wool amounted to an average of 550 million pounds weight plus an additional 75 million pounds weight of mohair, alpaca etc, and another 225 million pounds weight of wool rags and shoddy,⁴¹² a total of 850 million pounds weight. Of this, 530 million pounds weight of wool and 120 million pounds weight of shoddy were imported. This meant that Britain was dependent on overseas supply for over seventy-five percent of its wool supplies. Of this overseas trade, about half came from the Australian and New Zealand market, with the remainder from South Africa, India, Argentina, Chile and the Falkland Islands. So what was the effect of the blockade on the wool trade? With the beginning of the war, the

⁴¹¹ Ibid.

⁴¹² Shoddy is recycled or remanufactured wool. To make shoddy, existing wool fabric is cut or torn apart and respun. As this process makes the wool fibres shorter, the remanufactured fabric is inferior to the original.

demand for wool grew initially with the increased demand for items of clothing such as uniforms and blankets. At the same time, there was a serious drought in Australia, which resulted in a loss of twenty per cent of the entire Australian flocks, reducing supply dramatically, just as demand had begun to increase. A number of measures were therefore taken by the British Government in order to make more efficient use of existing wool stocks, keep prices as low as possible and, eventually, to lower the demand for wool.⁴¹³

An export priority scheme was also established, but as Dorothy Zimmern noted:

Before the scheme was able to come into effective operation, two events occurred which changed the whole situation. The declaration of unrestricted submarine warfare made it imperative to husband with the greatest care a raw material which is not only essential for carrying on the war, but is bulky and produced mainly on the opposite side of the globe, while the resulting entry into the war of the United States caused the urgency of the export problem largely to disappear. In consequence, the export priority scheme and the machinery set up to carry it into effect became transformed into a rationing scheme, with the object of restricting the consumption of wool to a safe quantity and of distributing the available supplies in a fair and judicious manner.⁴¹⁴

Keeping up with demands for wool supplies, although made difficult by the U-boat blockade, was achieved by good housekeeping and the fortuitously-timed introduction of the US lines of supply to the war, thus cancelling out the effects of the blockade.

Economic Case Study 3: The Supply of Wheat During the First World War

The supply of wheat and the state of the world's wheat supplies prior to the First World War have been analysed extensively by Offer.⁴¹⁵ In both the previous chapter and Offer's chapter on the U-boat campaign, the German plans to cripple Britain's wheat supplies by reducing imports at a critical time, are discussed at length. Before the war, the average annual wheat production of Britain was some 61 million bushels but consumption was 282 million bushels, leaving an import requirement of 221 million bushels.⁴¹⁶ When war broke out, supplies of wheat were, like coal and wool, vulnerable to labour shortages, which inevitably led to a fall in domestic wheat production. At the outbreak of the war, the

⁴¹³ Zimmern, 'Wool Trade', p.16.

⁴¹⁴ Ibid., p.20.

⁴¹⁵ Offer, *The First World War*.

⁴¹⁶ George W Norris, 'The Supply of Wheat', *Annals of the American Academy of Political and Social Science*, (July 1918), p.164.

combined wheat production of Britain, Italy and France, was only eighty-nine per cent of the normal. In 1915 this was eighty one per cent, in 1916 it was seventy seven per cent and had dropped to just sixty per cent by 1917.⁴¹⁷ In spite of this, Holtzendorff and his team of economic warfare planners back in Germany had underestimated the level of support that was to be provided by the US once they had actually taken the step of joining forces with Britain in the war. Likewise, Holtzendorff and his team also seemed to have underestimated the British resolve when faced with a crisis. Again, in a similar way to other commodities, Britain managed to take charge of the meagre resources available and make the most of them.

The severe tonnage losses inflicted by the U-boats were not a true measure of success for Germany. The aim had been to reduce British wheat stocks to starvation levels and according to Offer, 'the U-boats never even remotely approached their target'.⁴¹⁸ In November 1916, British wheat stocks were down to less than sixteen weeks' supply. Stocks of wheat that were under direct Government control were down to only eleven days.⁴¹⁹ The Government placed a requirement for a six-month reserve and the Royal Commission for Wheat Supply factored this requirement into its plans for re-building wheat stocks, including a ten per cent contingency factor for expected losses as a result of U-boat attacks. On average, the losses due to U-boats up to August 1917 were in fact only six per cent, with the exception of March 1917, where losses exceeded ten per cent. By the time 1918 came, losses only once exceeded two per cent. During what has usually been considered as Germany's 'decisive' six months in the first half of 1917, Britain's grain reserves more than doubled. This was achieved, in part, by giving a high priority to cargoes of grain; Government and millers' stocks increased from five and a half weeks at the end of March 1917 to fourteen weeks' supply by the end of July 1917. The blockade therefore had a direct effect on Britain's supplies of wheat but by careful management of

⁴¹⁷ Ibid.

⁴¹⁸ Offer, *The First World War*, p.366.

⁴¹⁹ Royal Commission for Wheat Supplies, *PRO 30/68/7 Total Stocks: 'Wheat Supplies - Importing Countries'* (1917).

existing stocks and the prioritisation of cargo, Britain was able to stave off the spectre of starvation that Germany had hoped to inflict on Britain through its U-boat campaign.

The German Experience

So far, this chapter has reviewed some of the economic factors associated with Britain during the war, so it is now time to turn to Germany. One of the most significant sources used was the Appendix to a memorandum by Hankey, which contained extracts from papers by German leaders on the effects of the blockade.⁴²⁰ As can be seen from the style of language used by General Ludendorff in particular, there was plenty of bitterness about Britain's use of the 'hunger blockade' and he placed the blame for economic deprivation squarely with Britain and the allies. This highly charged view is however worth examining as it represents the extreme end of the moral arguments associated with the British blockade. According to Ludendorff:

At the very beginning of the war, England, in total disregard of International Law, started the war of starvation against Germany and Austria-Hungary. This strangling hunger-blockade was intended to debilitate the body as to prepare the mind for the poison of propaganda. England had another aim: to make war against the children still unborn, so that a physically inferior race might arise in Germany. A more gruesome method cannot be imagined. England acted with inexorable consistency, as so often in her cruel history. Step by step, and of set purpose, the English Government, by Orders in Council of the 20th August and the 29th October, 1914, and other economic and military decrees, suppressed all direct traffic to the German harbours, all imports through neutral countries, and even the import of the products of neutral countries into Germany.⁴²¹

This quote raises a number of interesting points. First, with regard to the British plans to make war against unborn children and hence bring about a new generation of inferior Germans, no explicit evidence has been found to support this claim. It is worth noting however that the blockade remained in place long after the Armistice. Because of this, the health of German children undoubtedly suffered during the winter of 1918-19. This situation was exacerbated by the breakdown of the rationing system, described by N P

⁴²⁰ M Hankey, *ADM 116/3619 Memorandum by Sir Maurice Hankey on Blockade and the Laws of War* (1927).

⁴²¹ Cited in Hankey. The source is actually Ludendorff, *War Memories*, p.217.

Howard,⁴²² resulting in high numbers of civilian deaths in Germany. Howard also noted that of these civilian deaths, forty per cent of them occurred during November 1918.⁴²³

Table 18: Military and Civilian Deaths, over 1913 (945,835) - Germany 1914-19⁴²⁴

Year	Military Deaths	Civilian Deaths	Civilian Excess over 1913	% Increase
1914	241,343	988,204	42,369	4
1915	434,034	954,706	8,871	1
1916	340,468	957,586	11,751	1
1917	281,905	1,014,433	68,598	7
1918	379,777	1,216,882	271,047	29
1919	14,314	1,017,284	71,449	8
Totals	1,691,841	6,149,095	474,085	-

The second point of interest in the quote from Ludendorff is that he made absolutely no mention of the German actions during the war, which seemed strange, given the high regard in which the Germany military held themselves – his words seemed emasculated and showed Germany entirely in the light of a victim. Finally, he placed sole blame for the starvation of the German people on the British blockade. This was at odds with the view of his colleague, Field Marshal von Hindenburg: ‘Practically the whole country was going hungry and this not because food was lacking, but because administration and transport were at a standstill, and there was no means of adjusting supply to demand.’⁴²⁵ Notwithstanding his earlier comments, Ludendorff was still able to give some idea of the economic situation in 1917:

Our economic position had also become more acute and raw materials became scarcer. We had managed to struggle through the food troubles, but it had been very difficult. In the winter of 1916-17 there had been no means of carting potatoes. We had to fall back on kohlrabi. At that time many people went hungry. In spring and summer supplies improved; but they had only sufficed with the aid of Rumanian wheat and maize. By early threshing on a considerable scale we might yet tide over a period between the old harvest and the new... Forage had become very scarce; grazing started early and helped a good deal. The oat harvest had been bad and the hay crop scanty. Evidently the forage problem was going to become worse.⁴²⁶

⁴²² N.P. Howard, *The Social and Political Consequences of the Allied Food Blockade of Germany, 1918-19. German History*, 11, no. 2 (June 1993), pp.161-188.

⁴²³ Ibid., p.166.

⁴²⁴ Source: Ibid.

⁴²⁵ Paul Ludwig Hans von Hindenburg, *Out of My Life*, trans. by Frederick Appleby Holt (London: Cassell & Co, 1920), p.372. Offer has described the inability of Germany to mobilise its internal transport system as a barrier to trade. Offer, *Blockade and Strategy*, p.177.

⁴²⁶ Ludendorff, *War Memories*, p.525.

The winter of 1916-17 - known as the 'turnip winter' - referred to above, followed the catastrophic harvest of autumn 1916.⁴²⁷ A combination of heavy rain, early frost and a shortage of labour to bring in the harvest reduced the annual potato harvest by 50 per cent to just 25 million tons. Turnips became the national staple, whether boiled, baked or dried. The *Kohlrübe*⁴²⁸ was a stringy, coarse crop, tasteless and bland at the best of times.

Herwig noted:

Sailors with the German High Sea Fleet reported that their diet had been reduced to what they termed *Drahtverhau* (literally, wire entanglement) – a nauseous concoction of '75% water, 10% sausage, 3% potatoes, 2% peas, 1% yellow turnips, and small amounts of beef, fat, and vinegar'.⁴²⁹

In Germany, the effects of the blockade ran deep indeed. Germany's foreign trade fell from \$5.9 billion in 1913 to \$800 million in 1917. Domestic production across the country was stepped up to try to meet the increasing demand for products. In order to compensate for textiles, flax and hemp were planted. To help with the demand for wool, slaughter of sheep was prohibited. Textile industries were encouraged to look at alternative forms of supply from wood by-products, cellulose and paper; to develop artificial silk; and to extract fibres from stinging nettles, peat, reeds and bulrushes. Even with these measures, the demand was still far in excess of the available production facilities. Between October 1915 and October 1918, retail clothing prices rose dramatically; cotton stockings increased by 1000 per cent, cotton goods from 900 to 1400 per cent, and woollen materials from 800 to 1700 per cent.⁴³⁰ A stark comparison between British and German trade can be drawn by looking at imports and exports with the US. The table below shows import and export figures in millions of dollars but it should be noted that these figures represented the actual value of goods; prices increased during the war and this makes the comparison even more stark.

⁴²⁷ Vincent gives an extensive account of the turnip winter. Vincent, *The Politics of Hunger*, p.45.

⁴²⁸ One of numerous members of the brassica family, *Kohlrübe* is a pale green or purple, bulb-shaped vegetable that tastes a bit like a mild turnip. Although grown more for its bulb-like stem than for its greens leaves, these can be eaten too. *Kohlrübe* can be substituted for turnip in any recipe, and is supposedly good steamed or boiled, sliced and stir-fried and added to stews or soups.

⁴²⁹ Herwig, *First World War*, p.292.

⁴³⁰ *Ibid.*, p.288.

Table 19: Comparison of British and German Imports and Exports with the US 1912-16⁴³¹

Millions of dollars (value)	1912	1913	1914	1915	1916
US Exports to Germany	330	352	158	12	2
US Exports to Britain	607	591	600	1198	1888
US Imports from Germany	186	184	149	45	6
US Imports from Britain	313	272	287	258	305

The human cost of all these economic effects was high in Germany and with much of the male population fighting the war at the various fronts, it was left to the women of Germany to cope on the home front. Belinda Davis has studied the effect of the blockade on the civilian population of Germany, particular the women of Berlin. She tells in detail, the story of food distribution, profiteering, protests and the efforts of the authorities to improve the distribution of food. Whilst these efforts to organise German food distribution were well intentioned, they were ultimately to fail:

Many Berliners publicly rejoiced at the establishment of the KEA⁴³² in May 1916, the culmination of seven months of nationwide popular demand. But the public soon perceived this office to have failed in its mission; the cycle of government response followed by failure ran its course now on a grand scale.⁴³³

Ute Daniel concentrated entirely on how working-class German women were affected by the First World War, investigating how their role in Germany changed as a result of their wartime emancipation.

This independent attitude of the majority of working-class women ultimately manifested itself in their general rejection of the war, and of the government and military leadership responsible for it – a rejection in which women, as a result of their responsibility to feed their families, felt themselves completely justified. In this attitude, the emancipator potential created by the changes in the family's productive and consumptive performance expressed itself in the most unambiguous way. Against this background, women emancipated themselves – to fall back on the words of Karl Gutzkow – from the system.⁴³⁴

At the root of these changes was of course the shortage of food brought about by the British blockade of Germany. The cumulative effect of all these economic shortages began to weaken the resolve of the German people as Tirpitz recalled from his memoirs:

⁴³¹ Mark Jefferson, 'Our Trade in the Great War', *Geographical Review*, 3, no. 6 (June 1917), pp.474-480.

⁴³² The War Food Office, Kriegsernährungsamt or KEA.

⁴³³ Belinda J. Davis, *Home Fires Burning. Food, Politics and Everyday Life in World War I Berlin* (London: Chapel Hill, 2000), p.114.

⁴³⁴ Ute Daniel, *The War from Within. German Working-Class Women in the First World War* (Oxford: Berg, 1997), p.292.

The *Entente* has defeated us by means of the British ships of the line, which made the starvation blockade possible, and whose prestige yoked to England's chariot all the peoples of the world. The economic war had become the main fight, while the military front, in spite of the tremendous forces which were necessarily employed in the defensive fighting, was now the secondary theatre. Bleeding from a thousand wounds, underfed, with its back against the wall of its home, the best of Germany stood fighting for its life, when suddenly the wall was overthrown from behind, and the people lost their control and fell into delirium. I do not, of course, overlook for a moment the trials to which the nerves of the masses were exposed by the starvation blockade. The mental and physical effects of this, the most cruel of all weapons of war, which it was left to the English to introduce into modern warfare, must not be underestimated; they offer, indeed, a strong excuse for the gradual weakening of the power of resistance among the people.⁴³⁵

From this study of the economic effects of the war, the impression gained is that Britain, through careful management and the fortuitous intervention of the US, with all the economic support it brought, not to mention troops, ships and supplies, was able to withstand the economic effects of the blockade. Germany on the other hand was unable to feed its people properly and the economic effects of the blockade were instrumental to Germany's eventual defeat. As Offer notes 'The British blockade strategy achieved its purpose, although not precisely as planned'.⁴³⁶

⁴³⁵ Tirpitz, *Memoirs II*, p.24.

⁴³⁶ Offer, *Blockade and Strategy*, p.187.

6. International law versus domestic law: the case of the SS *Zamora*

The third section of the thesis moves on to consider international law during and immediately after the First World War. In this chapter, the rules and regulations of international law have been considered by using the SS *Zamora* as a case study. The SS *Zamora* case was one of many heard by the British Prize Court during the First World War. The original hearing was run-of-the-mill but on review by the Appeal Court, both the nature and authority of the Prize Court itself were brought into question. The Appeal Court's ruling was to have far-reaching consequences for the manner in which Britain conducted the economic war against German commerce for the remainder of the war. The principal outcome however was the formal abrogation of the Declaration of London, which despite being unratified, had been brought into effect by means of Orders in Council.

The primary sources for this case were the formal Lloyds Reports,⁴³⁷ available in the Admiralty Library in Portsmouth. More accessible however was the series of Law Reports from *The Times* newspaper, which reported the progress of both the original case and the appeal. No recent academic study has been uncovered on this particular subject and the fact that most of the source material was produced during or soon after the time of the *Zamora* case meant that the authors of these articles were denied historical perspective on its significance. It should of course be noted, with respect to this chapter in particular, that the author has received no formal legal training and all the legal terminology has been acquired in the course of the research.

Capture and Claim

Although the name *Zamora* referred to a Swedish ship, the real subject of the *Zamora* case was not so much the ship itself, but the 400 tons of copper (6662 bars), a contraband substance, that she was carrying. The Swedish Trading Company of

⁴³⁷ Edward Louis de Hart, *Lloyd's Reports of Prize Cases* (London: Lloyds, 1922), vols 4 and 8.

Stockholm originally bought the copper in the US from the American Smelting and Refining Company and the copper then remained in storage for some months following its purchase. It was finally shipped onto the *Zamora* at New York and the ship sailed on 19 March 1915 bound for Stockholm. HMS *Alsatian*, an Armed Merchant Cruiser, intercepted the *Zamora* on 7 April during heavy squalls of rain and hail, with a high sea running. This prevented boarding; therefore, HMS *Alsatian* remained in company through the night. The next day, with the wind and sea having died down, a prize crew boarded the *Zamora* in accordance with existing Admiralty Orders and she was sent to Kirkwall and later Barrow-in-Furness.⁴³⁸

A claim was then made by the Crown, through the Procurator-General, for the condemnation of the ship and its cargo on the grounds that the cargo of copper was considered to be contraband. As a result of this claim, a writ was issued for the *Zamora* to be condemned and confiscated as good and lawful prize, on the basis that more than half of the cargo was considered to be contraband; the remainder of the cargo comprised 101,974 bushels of wheat and 69,379 bushels of oats. In addition to the normal procedure, the Director of Army Contracts filed an affidavit at the War Office in support of the application for requisition. In this affidavit, the copper was alleged to be both contraband of war and enemy property bound for an enemy destination.

Before a final decision on the fate of the cargo could be made, the Crown made an interlocutory order⁴³⁹ that the 400 tons of copper making up the contraband cargo should be released and delivered to the Crown under Order 29 of the Prize Court rules as enabled by the Prize Court Act of 1894. In return for the copper, its appraised value was to be paid

⁴³⁸ Dudley Rawson Stratford de Chair, Rear Admiral, 'Rear Admiral de Chair to Admiralty, HMS *Alsatian*, 20 Apr 1915, Report of Proceedings, 9 March - 20 April 1915', in *The Maritime Blockade of Germany in the Great War: the Northern Patrol 1914-1918* (2003), ed. by John D Grainger, (Aldershot: Ashgate Publishing Limited for the Navy Records Society, 1915).

⁴³⁹ Interlocutory order. An intermediate decree before a final decision.

into the Court in accordance with rule 5 of this same Order. The version of Order 29 used in this case⁴⁴⁰ stated:

Order XXIX shall be and hereby is revoked, and in lieu thereof the following Order shall have effect:

(1) Where it is made to appear to the Judge on the application of the proper officer of the Crown that it is desired to requisition on behalf of His Majesty a ship in respect of which no formal decree of condemnation has been made, he shall order that the ship shall be appraised, and that upon an undertaking being given in accordance with Rule 5 of this Order the ship shall be released and delivered to the Crown.⁴⁴¹

Rule 5 referred to above read:

(5) In every case of requisition under this Order an undertaking in writing shall be filed by the proper officer for the Crown, for payment into the court on behalf of the Crown of the appraised value of the ship.⁴⁴²

Even though Order 29 made specific provision for ships, it was equally applicable to goods as well, by virtue of the Prize Court rules. To complicate the matter further, the third rule of the Order contained a provision concerning requisitions. If the Crown was able to present the judge of the Prize Court with a case such that the vessel in question was required for Crown service, the judge had the power to order the vessel released and delivered to the Crown without any appraisalment. In such a case, the amount payable by the Crown was to be fixed by the judge under rule 4 of the Order.

This method of claim on behalf of the Crown may appear to be a perfectly reasonable and legitimate one under the powers available to the Crown and the Prize Court at the time. The claim and requisition of the cargo was however resisted on behalf of the Swedish Trading Company on the grounds that the provisions of Order 29 violated the law of nations and were not binding upon the Court. Their main argument was that the Order in Council itself that gave the Prize Court rules their legal status was *ultra vires*.⁴⁴³ The case began on 10 June 1915.

⁴⁴⁰ This version revoked the Order 29 previously authorised by the Order in Council of 28 November 1914 under which the case of the *Antares* had been decided. In this case, the Defence of the Realm Act had been cited as justification for the Crown to take possession of anything it believed to be warlike, regardless of the fact that it might belong to a neutral. See 'The Prize Court. Copper Requisitioned By The Admiralty. The *Antares* (And Four Other Vessels). ' *The Times*, 2 March 1915, p.3.

⁴⁴¹ 'Law Report', *The Times*, 11 June 1915, p.9.

⁴⁴² Ibid.

⁴⁴³ *Ultra vires* (L) beyond one's powers or authority.

The President of the Prize Court was the Right Honourable Sir Samuel Evans.⁴⁴⁴ Representing the Crown were the Attorney-General⁴⁴⁵ and a Mr Branson. The claimants employed a larger team, comprising Mr Leslie Scott QC MP, Mr Roche QC, Mr Balloch and Dr Baty.

The claimants opened the hearing by submitting that if it was an Order in Council that gave the Court the power to transfer neutral property to the Crown through compulsory purchase, the Order was not in fact binding on the Prize Court. This power would represent a change in the substantive law of the Court regulating the rights of neutrals and their property on the high seas. It was also argued that the Order was not an exercise of the Royal Prerogative and any suggestion that substantive law could be changed by Royal Prerogative was in no way supportable by or in accord with constitutional law. This argument was reinforced by the citing of several cases, which showed that an Act of Parliament authorising the making of rules did not authorise any change in the substantive law created by such an Act.⁴⁴⁶

In response, the President stated that in broad terms, the law administered by the Prize Court was the law of nations i.e. international law. The reason (or excuse as it was called by the claimants) for the seizure of the *Zamora* was said to be one of military necessity. An example of military necessity as discussed in the Court went as follows, 'British ships were seized on the Seine in the Franco-Prussian War, 1870. That action was justified by Bismarck on the grounds of urgent military necessity'. This example appears to have shown an international precedent even though in the traditional sense, the term 'military' referred to Army matters more so than Naval. In the case of the *Zamora*, the

⁴⁴⁴ Rt. Hon. Sir Samuel Thomas Evans (1859-1918) 1906-1908; Solicitor-General. President of the Probate, Divorce and Admiralty Courts since 1910; President of the British Prize Court since the outbreak of the War.

⁴⁴⁵ Edward Henry Carson, Baron Carson (1854-1935) Called to the Irish Bar in 1877; junior counsel to the Attorney-General in 1887; QC, 1889; Solicitor-General for Ireland, 1892; Solicitor-General for England, 1900-5; Attorney-General, May 1915-October 1916; First Lord of the Admiralty in 1910.

⁴⁴⁶ E.g. *Cookney v Anderson* (1 De GJ. and S 365, at p.384) (De Gex & Jones' Chancery Reports). A useful tool for decoding legal case terminology can be found at www.legalabbrevs.cardiff.ac.uk.

claimants argued that it was common knowledge that Britain had free and open access to the copper markets of the world and therefore the idea of military necessity could quite rightly be called into question.⁴⁴⁷ The President clearly felt the need to defend Britain's position and quashed this quite valid counter argument by citing an earlier judgment by Mr Justice Story,⁴⁴⁸ a US Prize Court judge:

The legality of the conduct of the captors may, under circumstances, exclusively depend on the ordinances of their own Government. If, for instance, the sovereign should by a special order authorise the capture of neutral property for a cause manifestly unfounded in the law of nations there can be no doubt that it would afford a complete justification of the captors in all tribunals of prize.⁴⁴⁹

It is certainly not clear how this judgment could have been used as an attempt to settle an argument in the Prize Court, when international law regarding the capture of property at sea had been a topic of debate in academic and legal circles for at least the past ten years. Likewise, the very nature of warfare at sea during the early nineteenth century was markedly different to the state of warfare at sea that began to emerge during the First World War. The vessels, tactics, armament and propulsion had all changed; even the international law governing the conduct of warfare had changed as a result of the various Hague Conventions. It is interesting to note though that later in the original *Zamora* case and appeal, the majority of citations came either from the Napoleonic War or the American Civil War, long before the advances mentioned above were implemented or even considered. The validity of any comparison between these wars and the First World War must therefore be held open to question.

The *Zamora* case was the first time that any Order in Council had ever been formally questioned in a Prize Court and the Attorney-General continued where the President had left off by exaggerating the case for the Crown further. He suggested that if the Crown considered that the exigencies of the war and the defence of the realm necessitated the

⁴⁴⁷ As a brief aside, this situation could be compared with the German Prize regulations concerning military necessity, '... military necessity is constantly present in time of war.' FO 800/920 – a translation of the German Naval Prize Regulations – Translation of an Ordinance published in the Reichs-Gesetzblatt no.50 of 1914.

⁴⁴⁸ Editorial Comment, 'Biographical Notice of Mr Justice Story', *The American Whig Review*, 3, no.1 (January 1846), pp.68-82.

⁴⁴⁹ *Maisonnette v Keating* (2 Gall., 324) (Gallison's US Circuit Court Reports 1812-15).

requisition of the copper, then on the appropriate payment for the value of the copper, the requisition should be allowed i.e. accept that the Crown knows best. In the case of the *Antares*, the Attorney-General said 'What use would it be if the claimants got the order set aside? Some of the copper was at Woolwich, and how could the Court order one of the War Departments to return, not its value, but the actual metal?'⁴⁵⁰

The Attorney-General's argument continued to a greater extreme when he asked the claimants whether they felt that the King, who had the sole power to declare war or neutrality, really had no prerogative to exercise in this matter. He questioned whether there might be no circumstances, whatever the risk to the realm, where the Crown could requisition the goods of a neutral under the law of angary.⁴⁵¹ This question was clearly one that would have been impossible to answer. It seemed to be the view of the Court that the King could do no wrong⁴⁵² and any rebuttal of this argument was unpatriotic, especially in time of war.

The President's final summing up was interesting in that he not only explained his ruling but then cited a large number of cases to justify it. He started by explaining that he was not aware of any right in international law, by which seized property was required to be preserved until the final decree or declaration had been made. This may have been true but it strikes the modern reader as quite unfair to the claimant. The principle of 'guilty until proven innocent' then appears to have been invoked, with the President stating that for a claim to be correct, it was sufficient simply to capture the property and claim it as a prize; it was then up to the owners or claimants to establish the case for its release. Again, this hardly seems fair.

With the President having therefore dismissed the argument made by the claimants that the Crown possessed no right of disposal, and stating that the property could be

⁴⁵⁰ *The Times*, 'Prize Court, Copper'.

⁴⁵¹ Angary. A belligerent's right to seize and use neutral or other property (subject to compensation).

⁴⁵² Jennings C. Wise, 'Tort at International Law', *American Journal of International Law*, XVII, no.2 (Apr. 1923), p.247.

preserved *in specie*,⁴⁵³ the President proposed that it did not matter if the property was sold for good reasons or requisitioned by the Crown, regardless of whether the appraised value was paid. Nonetheless, this matter was already covered by the Order in Council under rule 4 of the Prize Court rules mentioned earlier, which dealt expressly with this situation. The President therefore moved on to consider the much larger issue of whether the Order violated any form of international law and whether, even if it did, the Court should still be bound to observe and obey it. By way of introduction to this next phase of the summing up, the President stated:

I must declare that, in my view, Order XXIX deals only with a matter affecting the procedure and practice of the court – a domestic affair, in which no foreigner, neutral or enemy, has any voice or right to interfere.... Matters of practice in proceedings... are not of international concern, and are not and cannot be regulated by uniform international principles or procedure to be applied in the courts of all countries; as an example, a reference to the Prize Regulations of Russia and Japan during the war of 1904-1905 will show that they differ as to the rules regulating sale of captured vessels and goods before or after the institution of prize proceedings.⁴⁵⁴

Having therefore stated his belief that not only was the Crown correct, but also that the Order in Council was binding on the Court, the President added further weight to his case by citing examples in which property had been condemned as a result of an interlocutory order, prior to the final condemnation.

The American Civil War had seen many prize cases and therefore offered a plentiful supply of cases for citation. One such example was that of the *Avery* and its cargo, in which Mr Justice Story stated:

It is very clear that the terms of this Act (stated) apply only to sales after a final condemnation, and not to sales made *pendente lite*⁴⁵⁵ under interlocutory decrees of court... Interlocutory sales are often ordered under a perishable monition and survey, or for other good cause in the discretion of the court.⁴⁵⁶

Although cited as a clear example, it still relied on the fact that the Court should decide on whether the 'cause' was 'good'. Several similar citations were made, all purporting to show that disposal of property prior to final condemnation was well within the rights and jurisdiction of the Court and certainly not a violation of the recognised law

⁴⁵³ *In specie* (L) in coin, in kind (in this context, in kind).

⁴⁵⁴ Judicial Decisions, 'British Prize Court Decisions: The *Zamora*', *American Journal of International Law*, IX, no. 4 (Oct 1915), p.1007.

⁴⁵⁵ *Pendente lite* (L) during the process of litigation.

⁴⁵⁶ 2 Gall., 307 (Gallison's US Circuit Court Reports).

of nations. With the benefit of hindsight, this justification appears rather flimsy at best, relying as it did on the Court's interpretation.

The President's final point in summing up was to explain that although he felt sure that the Prize Court was certainly bound to obey the Order in Council, a ruling by Lord Stowell in the case of the *Fox*⁴⁵⁷ supported his own view. In this ruling, Lord Stowell was considering the Orders in Council made by way of reprisal to the Berlin⁴⁵⁸ and Milan⁴⁵⁹ decrees of Napoleon. It is not clear just how valid a comparison could be drawn between retaliatory measures made over a hundred years previously, and measures taken to support the war effort in the First World War through the seizure of neutral shipping, but the President seemed adamant. He quoted further from Lord Stowell, who had stated on the one hand that other countries had a right to demand that their subjects be treated under international law, but on the other that the Crown possessed legislative rights over the Prize Court. Stowell did not see that there was any inconsistency or contradiction between these two conditions. A more general ruling on this subject by Mr Justice Story was also used:

The acts of subjects, lawfully done under the orders of their sovereign, are not cognizable by foreign courts. If such acts be a violation of neutral rights, the only remedy lies by an appeal to the sovereign, or by a resort to arms. A capture, therefore, under the Berlin and Milan decrees, or the celebrated Orders in Council, although they might be violations of neutral rights, must still have been deemed, as to the captors, a rightful capture, and have authorized the exercise of all the usual rights of war.⁴⁶⁰

The President therefore ruled in favour of the Crown on 14 June 1915 but importantly gave leave for the claimants to appeal. The decision to allow an appeal seems to have been influenced by the politically sensitive nature of the case, as this transcript from the Court showed:

⁴⁵⁷ Edw., 312 (Edward's Prize Cases; Edward's Leading Decisions in Admiralty); Judicial Decisions, 'Zamora', p.1012.

⁴⁵⁸ The Berlin Decree was made by Napoleon on 21 November 1806. G.E. Sherman, and others, 'Orders in Council and the Law of the Sea', *The American Journal of International Law*, 16, no.4 (Oct 1922), p.564.

⁴⁵⁹ The Milan Decree followed the Berlin Decree and was a further escalation in the furore over rights of capture and seizure at sea. *Ibid.*, p.569.

⁴⁶⁰ *Maisonnaire v Keating* (2 Gall., 324).

Mr Leslie Scott:

I have listened carefully to the Judgment of your Lordship, and it is very difficult for me, as Counsel, to ask for leave to Appeal. Your Lordship may know that there are a very large number of cases involved, and I am instructed, my Lord, as I told your Lordship before, on behalf of the three Scandinavian governments.

The President:

Yes; I have considered the matter Mr Scott. It is a very important point, and fully deserves argument elsewhere. I give you leave to Appeal.⁴⁶¹

It could be argued that the appeal was only granted in order to prevent further antagonising the Scandinavian countries at a time when their support and co-operation was essential to Britain's interests.

The Zamora Appeal

The appeal against Sir Samuel Evans' original judgment began on 14 February 1916 and was recorded again in *The Times* Law Reports although much greater detail was recorded in the *American Journal of International Law*.⁴⁶² The appeal was judged by Lords Parker,⁴⁶³ Sumner,⁴⁶⁴ Parmoor,⁴⁶⁵ and Wrenbury,⁴⁶⁶ and Sir Arthur Channell⁴⁶⁷ (hereafter referred to collectively as 'their Lordships'). An addition to the Crown representation from the original case was the Solicitor General;⁴⁶⁸ Sir Robert Finlay QC joined the team acting on behalf of the claimants.

⁴⁶¹ *FO 115/1949 Steamship "Zamora" (Part Cargo Ex)(Summons Adjourned into Court for Argument) No 538*. (London, High Court of Justice Probate, Divorce and Admiralty Division (Admiralty), 1915).

⁴⁶² Judicial Committee of the Privy Council, 'Part Cargo Ex SS. Zamora', *American Journal of International Law*, X, no.2 (Apr. 1916), pp.422-444.

⁴⁶³ Lord Parker of Waddington was called to the Bar in 1883. Judge of the High Court, 1906-1913 and a Lord of Appeal in Ordinary since 1913.

⁴⁶⁴ Lord Sumner called to the Bar, 1883; Judge of High Court of Justice, King's Bench Division, 1909-1912; a Lord Justice of Appeal, 1912-1913; a Lord of Appeal in Ordinary 1913-1930.

⁴⁶⁵ Charles Alfred Cripps, first Baron Parmoor (1852-1941). Called to the Bar in 1877.

⁴⁶⁶ Henry Burton Buckley, first Baron Wrenbury (1845-1935). Called to the Bar on 7 June 1869.

Appointed a judge of the Chancery Division of the High Court in 1900. Promoted to the Court of Appeal and made a privy councillor in October 1906. On his retirement from the bench in 1915, he sat frequently in both the judicial committee of the Privy Council and the House of Lords.

⁴⁶⁷ Sir Arthur Moseley Channell (1838-1928). Called to the Bar in 1863. In 1914, Channell retired from the bench and became a member of the Privy Council. During and after the First World War he was a member of the judicial committee in Prize Court appeals (1916-21).

⁴⁶⁸ Sir George Cave (1856-1928). Barrister Inner Temple, 1880; Solicitor-General 1915-1916 (a law officer of the crown, deputy to the Attorney-General; a political appointee with ministerial rank).

The first observation that their Lordships wanted to make was that the provisions of rule 1 of Order 29 were *prima facie*⁴⁶⁹ imperative. The rule was designed in such a way that in theory, when a given set of circumstances arose, the judge would be procedurally bound to act in a particular way as a matter of law. In the case of the *Zamora*, the judge would therefore be bound to rule in favour of the Crown if a requirement was put forward to requisition goods or vessels on behalf of the Crown. If this interpretation of the theory was to be taken by the Appeal Court judges as being the intended construction of the rule then the judge in the original case was correct to follow the rule as a matter of law. Following this logic, the appeal would have to fail because the actions of the judge were entirely in accordance with the correct procedure. If however the very theory on which the rule was constructed was called into question and it turned out that the rule was not, as a matter of law, binding on the judge then the outcome of the original case may have to be construed in some other way. Their Lordships therefore decided to consider whether the rule was in fact a binding imperative on the judge and if so, to what extent was it binding. In other words, the appeal would question the very authority on which the Prize Court was based.

The Prize Court rules derived their force from the Orders of the King in Council of 29 April 1915. These Orders in turn came from the powers vested in the King by means of the Prize Court Act 1894. This Act conferred on the King in Council the power to make rules for the procedure and practice of the Prize Courts. Prize Court rules relating to procedure and practice, therefore had statutory force and were legally binding. So far so good. Rule 1 of Order 29 however was not merely an expression of procedure or practice. It was argued that the only way in which this rule could be considered as procedure or practice was if it were construed as prescribing the course of action to be followed only once a right to requisition had been established. In other words, the rule could be considered as procedure or practice if the judge was satisfied that, according to the law

⁴⁶⁹ *Prima facie* (L) sufficient to support the bringing of a charge in a case.

administered by the Prize Court, the Crown had some right to requisition the vessel or goods, outwith the power of this rule. This might also apply if the judge felt at liberty to exercise some discretionary power inherent in the Prize Court rules to sell the vessels or goods to the Crown. It followed that if rule 1 of Order 29 was to be taken as a binding imperative on the judge, it must be by virtue of some power vested in the King in Council from something other than the Act of 1894. In defence of the Crown, the Attorney-General contended that the King was able to exercise the Royal Prerogative. The logical next step was therefore for their Lordships to consider whether such a prerogative could in fact be proven.

As a general constitutional principle, the idea that the King in Council had the power to prescribe or change the law laid down by an Act of Parliament and administered by Courts was (and remains) at odds with the Constitution.⁴⁷⁰ It would certainly be reasonable to assume that the Royal Prerogative had no power to prescribe or alter the law in common Courts of the land, but Prize Courts by their very nature, were considered different from other Courts with respect to jurisdictional matters. To put this into context, it is worth noting that prior to the Naval Prize Act of 1864, the High Court of Admiralty exercised jurisdiction in prize cases by virtue of a commission established under the Great Seal⁴⁷¹ at the beginning of each war. The form of commission conferring jurisdiction on the Court of Admiralty was substantially the same. It required and authorised the Court to 'proceed upon all and all [sic] manner of captures, seizures, prizes and reprisals of all ships or goods which are or shall be taken, and to hear and determine according to the course of admiralty and the law of nations.'⁴⁷²

Looking more closely at this, two points were noted during the appeal. Firstly, all matters concerning the Court were derived from the sovereign's power as a result of a war i.e. the Prize Court can only exist in times of war. In such a case, the Crown must legally

⁴⁷⁰ A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th edn (London: Macmillan 1915).

⁴⁷¹ The state seal of the United Kingdom.

⁴⁷² Judicial Committee of the Privy Council, 'Zamora', p.425.

be directly or indirectly a party to all proceedings of prize. In the Prize Court, the position of the Crown was the same as in ordinary Courts; rights based on sovereignty were waived and the Crown accepted the role of an ordinary litigant. For a Prize Court to be fair to both parties, it would have been placed in an impossible position if it were to take orders from one of the litigants, in this case, the Crown.

The second point was that the law administered by Prize Courts was not domestic law, but in fact international law.⁴⁷³ The validity of the Court rested on its foundation in domestic law but the distinction between a domestic Court and international Court was defined thus:

A court which administered municipal law was bound by and gave effect to the law as laid down by the sovereign state which called it into being. It need inquire only what that law was, but a court which administered international law must ascertain and give effect to a law which was not laid down by any particular state, but originated in the practice and usage long observed by civilized nations in their relations with each other or in express international agreements.⁴⁷⁴

This means that if the Court was given orders by the Crown (through the Orders in Council), then it was actually administering domestic law rather than international law. Given the state of international law at the time, the established precedents of custom and practice were used to define the body of international law. Even though the Declaration of London had been an attempt to codify international law, it was brought into force in Britain by an Order in Council. In doing so, this nullified any international credentials that it may have held.

This rather complicated extract from the appeal case showed that there existed a clear conflict between Sir Samuel Evans in the original case, and the members of the Appeal Court over the interpretation of the procedure that the Court should have followed. The very nature of a Prize Court, however, as one that administered international law, was that it remained independent of the domestic laws under which all other Courts of the land were bound. If the Prize Court did not exist as an arbiter between nations, there would

⁴⁷³ Further examples regarding conflicts between domestic and international law are related in Quincy Wright, 'Conflicts of International Law with National Laws and Ordinances', *American Journal of International Law*, XI, no.1 (Jan 1917), pp.1-21.

⁴⁷⁴ Judicial Committee of the Privy Council, 'Zamora', p.426.

theoretically be no other form of redress except through diplomatic channels and ultimately a resort to arms. The remedy to this potentially disruptive situation therefore was the creation of Prize Courts, whereby every power considered as a belligerent in a conflict, should appoint and submit to the jurisdiction of a Prize Court, to which anyone with a grievance had access. In order to be fair, the law administered by such a Court needed to be international, not domestic law. If it could be proven that a Prize Court was in fact operating under the direction of the executive body of a sovereign nation, in this case the King in Council, then the legitimacy of the British Prize Court and even the entire system of Prize Courts could quite rightly be left open to question.

During the appeal, the precedents supporting the necessary independence of international law from domestic law were cited far back in history. One such useful example concerned British captures of Prussian vessels during Britain's war with France and Spain, which broke out in 1744. In response (reprisal) to the British action, Frederick II of Prussia suspended the payment of interest on the Silesian loan.⁴⁷⁵ A report signed by Sir William Murray, then Solicitor General, stated:

When the judges are left free and give sentence according to their conscience, though it should be erroneous, that would be no ground for reprisals. Upon doubtful questions different men think and judge differently, and all a friend can desire is that justice should be administered to him as it is to the subjects of that Prince in whose Courts the matter is tried... The Crown never interferes with the course of justice. No order or intimation is given to any Judge.⁴⁷⁶

This citation was clear evidence for their Lordships that any notion of a Prize Court being bound by the executive orders of the Crown, or having to administer domestic rather than international law, was contradictory to the best legal opinion of the day. It was therefore established that a Prize Court should not be required to obey the contents of an Order in Council. Having reached this conclusion, their Lordships ruled that Prize Courts

⁴⁷⁵ A loan of £80,000 was advanced by Britain to the Emperor Charles VI on the security of the Duchy of Silesia. Silesia, in course of time, was transferred to Prussia by virtue of the Treaties of Breslau and Dresden, and in consideration of this cession, Prussia was to discharge the debt. Prussia, however, took into its own hands, the debt by way of reprisals, although this was outwith the terms of the Treaty. Frederick then professed himself to be aggrieved by the decision of English Prize Courts in respect of acts of vessels belonging to his subjects, and refused to pay Britain the interest which he had pledged himself to pay. In the end he gave way and the interest on the Silesian loan was paid punctually thereafter.

⁴⁷⁶ Judicial Committee of the Privy Council, 'Zamora', p.427.

could however give appropriate weight to Orders in Council, short of treating them as binding and authoritative law. Although not quite contradicting their earlier ruling, this does seem to offer a great deal of leniency to the use of Orders in Council. An example given to illustrate this point was that an Order declaring a blockade would *prima facie* justify the capture and condemnation of vessels attempting to enter blockaded ports. This would not however preclude any evidence that might subsequently be produced by the claimants to show that the blockade was ineffective, and therefore unlawful (under the Declaration of Paris in this example). The ruling by their Lordships thus began to work its way back to the subject of the appeal itself to consider what, if any, rights the Court had regarding the condemnation of the goods i.e. the *Zamora's* cargo of copper.

The verdict of the Appeal Court regarding the interlocutory sale of the copper was simple. There was no such power inherent in the Court to order the sale; the primary duty of a Prize Court was to preserve the goods for delivery to the party who ultimately established ownership. In some instances, this would not have been practical given the perishable nature of some goods, but this clearly did not apply in this case. Any limited powers arising from these circumstances would certainly not empower the Court to sell the goods simply because one party wanted a sale or claimed to be the owner, regardless of whether or not this party was the Crown.

This final and probably most controversial consideration in the appeal was therefore whether, independently of the Order in Council (rule 1 of Order 29), the Crown did in fact possess some right to requisition goods or vessels prior to any final condemnation by the Court. It was on this subject that the Attorney-General stressed the existence of the Royal Prerogative. There was no question that the Crown could requisition any property belonging to a subject of the realm through a domestic Court, but could this be done through the Prize Court, administering as it did international, not domestic law? This right possessed by the Crown was in fact considered a right possessed by most nations; a case could therefore be made for an expectation that a belligerent power could exercise such a

right to requisition the goods of neutrals within its jurisdiction. If this extension of the domestic argument was accepted then such a right could be considered as international law. This could then sanction the right of a belligerent power to exercise domestic law in a Prize Court or recognise the right of others under a similar international obligation.

One plausible view cited was that the mere fact of neutral property being within the belligerent's jurisdiction should have been sufficient to render it subject to the domestic law of that nation.⁴⁷⁷ The presence of a ship within a country's jurisdiction could however be due to passage, stopping at a port, or being brought in by force during a war. The circumstances under which goods and ships might find their way into British jurisdiction could therefore be many and varied. It would in turn be inconsistent with international law if each case required an investigation to establish whether domestic law or international law was being applied. This inconsistency had the potential to increase if a belligerent nation could alter its own domestic law and, in so doing, alter the rights of individuals from other nations without recourse to any higher forum.

Was it also right that the Crown should be able to requisition the copper prior to final condemnation? The right of pre-emption was one which had become common practice in British law and had arisen as follows: according to the British view of international law, naval stores⁴⁷⁸ were absolute contraband, and if found onboard a neutral ship heading for an enemy port, were lawful prize. Other countries contended that such stores were only contraband if destined for use by the enemy Government; if destined for the use of civilians then they were not contraband at all. To mollify neutral owners, Britain had adopted the practice of buying such stores from their neutral owners, rather than condemning them as lawful prize and this practice eventually became accepted under international law. This was however always limited to naval stores and all litigation ended

⁴⁷⁷ Erich Albrecht, 'Requisitionen von neutralen Privateigentum', *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, 6, no.1 (1912) (np), cited in Judicial Committee of the Privy Council, 'Zamora', p.433.

⁴⁷⁸ The term 'naval stores' actually dated back to the time of George III and it was noted by Sir Robert Finlay that there was a large difference between the definition used in 1779 when statutes mentioned naval stores specifically, and that of the day.

when the transaction between the Crown and the neutral owner had ceased. The question therefore was posed in the Appeal Court as to what goods could in fact be classified as naval stores or more importantly, what justification should the Crown have for requisitioning goods in the first place. Firstly, there needed to be a sound reason for the requisition. Matters of national security or wartime exigency could certainly be considered as sound enough reasons. Secondly, there must have been a real question to answer over the nature of the goods such that an immediate release of the goods would be deemed improper. Finally, it was deemed that the right to buy the stores should be enforced by an application to the Prize Court; any application from the Crown could rightly be treated as one that would have reasonable knowledge of the national security exigencies.

The affidavit from the Director of Army Contracts produced in the *Zamora* case simply stated that the copper was required; no national security requirement was mentioned. The circumstances under which the requisition of the copper was made were therefore not entirely clear, as the judge had not been provided with sufficient evidence at the time to decide whether a proper requirement existed. This was ultimately a technicality but this simple test for a national security requirement was applied in later cases, such as the *Pomona* in 1939.⁴⁷⁹

It had now been clearly established by the Appeal Court that an Order in Council could not be considered as binding on a Prize Court, except as a form of mitigation on behalf of the Crown i.e. one of the litigants. The case was summed up succinctly in an editorial in *The Times*:

To all of many important results of this decision we need not now advert. Probably some of them will have to be considered by the Foreign Office... but obviously the principle, stated in the *Zamora* decision with unprecedented clearness, has far-reaching consequences. Every Order in Council not made under statutory powers is valid only so far as it is in harmony with international law and usage. The Prerogative of the Crown, in the domain of Prize Law as elsewhere, is subject to limitations and is not of that inordinate and measureless character claimed for it by law officers in Tudor – and, let us add, scarcely less in very recent – times.⁴⁸⁰

⁴⁷⁹ Josef L. Kunz, 'British Prize Cases, 1939-1941', *American Journal of International Law*, XXXVI, no.2 (April 1942), pp.204-228.

⁴⁸⁰ 'Editorial', *The Times*, 11 April 1916, p.9.

It should be noted that throughout this case, no reference was made to the Declaration of London. The Declaration of London was surely intended to clarify many issues of prize law but in fact appeared to have played no part in these proceedings at a time when it would probably have been quite useful. Although never formally ratified, the Royal Navy was in fact conforming to the spirit of the Declaration in the way it conducted itself under the rules of Prize. In the *Zamora* case, their Lordships referred instead to actual case precedents, which could provide some form of justification for their ruling. Such cases would certainly have had more legal authority to these learned judges than an unratified international agreement barely seven years old.

The *Zamora* Committee

The Appeal Court's ruling of the *Zamora* case added weight to Lord Cecil's view that the Orders in Council regulating the implementation of the Declaration of London no longer served a useful purpose.

Shortly after the *Zamora* ruling, the *Zamora* Committee made a report to the Attorney-General.⁴⁸¹ This committee had six members, of which two had represented the claimants in the *Zamora* appeal (Leslie Scott and A A Roche). Another member of the committee was A Pearce Higgins,⁴⁸² a renowned lecturer on international law, whose view on the legality of submarines is considered in the next chapter. The committee's report covered: the effect of the judgment in the appeal of the *Zamora*; the Orders in Council that were conceivably affected by the judgment; reasons for maintaining the Declaration of London Orders in Council; and the reasons for repealing the Declaration of London Orders in Council. The *Zamora* Committee established several important points:

⁴⁸¹ *FO 800/918 Maritime Rights, Prize Order in Council and Papers Relating to Withdrawal of Declaration of London* (London, HMSO, 1914-1917).

⁴⁸² A. Pearce Higgins, CBE LLD. Lecturer on International Law at the London School of Economics and at the Royal Naval War College 1908-1914. Later Whewell Professor of International Law in the University of Cambridge and Professor of International Law in the University of London. He was also an academic advisor to the Treasury and the Trade Division of the Admiralty.

- (a) The Law which the British Prize Court is to administer is International Law.
- (b) The King, i.e. the Executive, cannot alter the law of the Court. Orders in Council which purport to do so are *ultra vires* and *pro tanto a nullity*.⁴⁸³
- (c) But the King can make concessions, and he may do this not only in individual cases but generally and by anticipation, for example, by declaration in an Order in Council.
- (d) It follows therefore that:-

(1) The Government cannot by executive act alter International Law in its favour.

(2) The Government can by executive act, in effect, alter International Law as against itself and in favour of claimants.⁴⁸⁴

Five out of the six committee members agreed⁴⁸⁵ that the Declaration of London Orders in Council of 1914, 1915 and 1916 should be repealed. There was unanimous agreement that rule 1 of Order 29 need not be amended and no change should be made to the Reprisals Order in Council of 11 March 1915.

The Admiralty View

From a strategic perspective, it was clear that the British position needed to be clarified. In early January 1916, Lord Cecil decided to seek the Admiralty's opinion on the Declaration of London. An initial response came from the Admiralty on 19 April 1916 and gave a pragmatic view of the Declaration of London. The report highlighted again the differing views between the allies, regarding international law:

The other powers invited to attend the (London) Conference were requested to submit similar memoranda and a comparison of these documents shows how extremely divergent the views are on many points...It is therefore a difficult thing to say what is the correct interpretation of the law on those points where differences of opinion exist... We are fighting with Allies whose conception of international law is not the same as ours... The Declaration of London with all its faults forms a good ground on which a workable arrangement can be founded. We have amended it considerably by agreement with our Allies and most of those parts of it that are inimical to our interest have been cut out or changed. We can still amend by agreement, but I think we should hold to the actual framework of the text which provides a very convenient code which all Allies are willing to accept in the place of the rather nebulous rules which varied with each Power.⁴⁸⁶

⁴⁸³ *Pro tanto a nullity* (L) to be considered as null or void.

⁴⁸⁴ FO 800/918, p.1.

⁴⁸⁵ Maurice Hill disagreed.

⁴⁸⁶ Admiralty (illegible signature), ADM 116/1234 *International Law and the Declaration of London* (1916).

These principal points of difference were noted as blockade, contraband, the definitions of enemy ships, liability to seizure, and enemy character.⁴⁸⁷ Each of these areas was considered in turn by the Admiralty and, in conclusion, the report recommended, 'It therefore seems to be wiser to maintain the Declaration of London.' A later report from the Admiralty in May 1916⁴⁸⁸ appeared to take a more considered view of the wider implications of the possible abrogation of the Declaration. There was concern over not only naval action and Prize Court jurisdiction, but also relations with allies and neutral countries. The report opened by explaining the Admiralty's position regarding the Declaration of London, and the effect that any changes in the Orders in Council might have upon naval operations. The Admiralty considered the changes proposed in the draft Order in Council and did not oppose them in principle. If the Declaration of London were abrogated, the Government would be given greater freedom over questions of blockade declarations, issuing of contraband lists, unneutral service, enemy character, searching of ships in neutral convoy, and the penalties for resistance to visit and search. Most of these advantages were considered by the Admiralty to be theoretical, particularly in the area of neutral convoys i.e. neutral nations employing their own warships to protect their merchant vessels, a rare if not unheard-of practice during the war. As discussed in chapter four, the Admiralty in 1916 did not believe in placing merchant vessels under convoy and felt that neutral Governments would think likewise. British practice allowed for vessels under neutral convoy to be stopped and searched. The Admiralty considered that abrogation of the Declaration of London would introduce no new restrictions on their ability to wage war and that any decision to abrogate was really a matter of foreign, rather than domestic policy.⁴⁸⁹

From an operational point of view, the outcome of the *Zamora* case was to force Britain to show that its Prize Court would comply with international law and not be bound

⁴⁸⁷ See the discussion in chapter one for greater detail.

⁴⁸⁸ FO 800/918.

⁴⁸⁹ Bell, *Blockade*, p.463.

by the domestic influences created by Orders in Council. If the Declaration of London and its Orders in Council were not abrogated and withdrawn, Britain ran the risk of the actions of the Fleet being at odds with accepted international law. By abrogating, however, this would ultimately provide greater freedom for Britain to pursue the blockade under the custom and practice established prior to the Declaration of London.

Following the signing of the Declaration of London in 1909, the Admiralty amended the instructions issued to the Fleet in the Naval Prize Manual on the assumption that the Declaration would soon be ratified. Fortunately, no case had been brought against a boarding officer for acting illegally, but because of the *Zamora* judgment, such cases could not be ruled out in the future. It is worth noting here that the Admiralty was ahead of the Foreign Office in its implementation of the Declaration of London. It was therefore imperative to ensure that the Fleet could not be seen to act in an illegal manner because of a wrongly conceived order.

The French View

Turning towards international considerations, the French Government was initially opposed to any plans for the abrogation of the Declaration of London. Bell noted that the Declaration of London 'had been looked upon in some quarters as a victory for The Hague or Continental school of law, and French lawyers and seamen alike were anxious that it should not be formally withdrawn.'⁴⁹⁰ The French view was therefore one of despondency and threatened the unity of the allies. Lord Cecil was duly concerned by this and negotiated a covering declaration for neutral Governments, separate to the Order in Council. As part of the efforts to keep Britain's allies involved in this process, Lord Cecil led a delegation to Paris to discuss the proposed abandonment of the Declaration of

⁴⁹⁰ Ibid., p.464.

London and the new Order in Council with representatives from the French Foreign Office and Admiralty.⁴⁹¹

The involvement of the French Government in this drafting process was considered to be important to the British Government but it is quite clear from a letter from the Foreign Secretary to the British Ambassador in Paris, that differences of opinion were in fact quite acceptable – *vive la différence*?

The object of the Order in Council is two-fold. In the first place we are anxious, for reasons of domestic politics, to correct the impression that we have fettered the action of the Fleet by the adoption of the Declaration of London. It is of course pure nonsense to say anything of the kind, but unfortunately it has been said, and has produced a good deal of uneasiness in the country.

The second reason why I should be glad to get rid of the Declaration of London is that it has the inevitable disadvantages that attend all codes of law, of which the chief is that it is too rigid. Take for instance the question of blockade. We are all agreed that the ancient rules of blockade are no longer applicable to modern war conditions. But even those laid down in the Declaration of London might easily be the cause of considerable inconvenience. It may well be that we should wish at some future stage of the war to declare a blockade extending beyond the ports and coasts belonging to or occupied by the enemy, in spite of Article 1 of the Declaration....

If, however, the French Government should be of opinion that it would be undesirable for them to make any alteration in their own Prize Law as at present settled, you might ask them whether they see any objection to the Order in Council being passed for British purposes. I do not myself see any particular reason why the Prize Law of France and Great Britain should be absolutely identical provided that it is - as it would be even if this Order in Council were passed, substantially the same.⁴⁹²

From the onset of these discussions, Lord Cecil was doubtful that any agreement could be reached but it soon became clear that the French were keen to devise a formula that 'would to some extent save their face.' This formula, proposed by Admiral Lacaze,⁴⁹³ took the form of a proposed declaration of principles, intended to reassure neutrals regarding the consequences of withdrawal from the Declaration of London. After further consideration however, Lord Cecil noted 'experience showed us that the statement of principles was not in fact convenient or adequate; and that we therefore proposed to abandon the attempt to define those principles beyond stating some of them in very general terms.'

⁴⁹¹ Lord Robert Cecil, CAB 37/149/11 *Declaration of London. Memorandum Discussing Arrangements for French Government to Withdraw* (London, 1916).

⁴⁹² Foreign Office, FO 800/918 *Letter from the Foreign Office to British Ambassador, Paris* (Foreign Office, 1916).

⁴⁹³ Admiral Marie-Jean-Lucien Lacaze (1860-1955) served as Minister of Marine in the French Government from 1915-17.

It was not only the view of France that concerned Lord Cecil. He further agreed to place the results of all these deliberations before the Russians and Italians for the sake of unity. The idea of a statement of principles by now appeared redundant to Lord Cecil but in order to satisfy the concerns of those nations upholding the traditional Continental view namely France and Spain; he therefore decided to include the statement with the Order in Council. Given Sweden's inclination towards the Continental view of maritime law, it was also felt that this statement might have a soothing effect on the Swedish Prime Minister.

The Historical Significance of the *Zamora* Case

The *Zamora* case was historically significant not least because of its timing in relation to other work that was taking place in the field of international law. From late 1915, the Ministry of Blockade began to undertake a general revision of the legal doctrine under which it was acting. This began with a review of Article 57 of the Declaration of London and grew to look at the Declaration itself.⁴⁹⁴ The Orders in Council that were in force covering blockade were by no means coherent and were viewed as little more than a series of amendments to the original Declaration. The original Order of October 1914⁴⁹⁵ remained valid but had been amended and updated by the March 1915 Order;⁴⁹⁶ this Order stated that goods of all kinds were to be dealt with as the Prize Court directed if they were being transported directly to the enemy, or through a neutral. The Order of October 1915⁴⁹⁷ then added to the existing confusion in that treatment of all cargoes under consideration by the contraband committee was regulated by agreements with the neutral shipping associations. This Order in turn was superseded by the Order of March 1916,⁴⁹⁸ which stated, in summary, that the October 1915 Order should not be considered as placing

⁴⁹⁴ FO 800/919 Report of the Second Meeting of the Sub Committee of the War Trade Advisory Committee appointed to discuss Article 57 of the Declaration of London. (London, 1915).

⁴⁹⁵ The Declaration of London Order in Council No 2, 1914, dated 29 October 1914.

⁴⁹⁶ Order in Council dated 11 March 1915 (the Reprisals Order).

⁴⁹⁷ The Declaration of London Order in Council, 1915 dated 20 October 1915.

⁴⁹⁸ The Declaration of London Order in Council, 1916 dated 30 March 1916.

any constraint on the right to capture goods under international law if these goods were considered to be conditional contraband.

Of the five relevant Orders in Council produced since the war began, four of them made modifications to the Declaration of London. The Reprisals Order of March 1915 made use of the ancient consuetudinary law of nations but did little to alter the Declaration of London. This Order was however one on which the British Government relied heavily as part of its legal justification for the maritime blockade of Germany but when faced with legal questions arising from this Order, the Declaration of London itself gave little or no guidance. Government advisors were therefore forced to refer to customary law, also known as the Course of Admiralty and the Law of Nations. The Reprisals Order in Council of 1915 did however provide an example of the wider application of the *Zamora* ruling because during the deliberations on the *Zamora*, it was established that capture of foreign property could be considered as justified under international law when faced with the exigencies of war.

On 16 February 1917, a new Order in Council was issued which supplemented the Reprisals Order of 1915 by declaring that ships and cargoes of enemy destination or origin would be held liable to condemnation as prize, whether contraband or not, if found proceeding to their destination without calling at a British port. This introduced a new principle: for the first time, non-contraband goods became liable to condemnation as prize, instead of mere detention under the previous Order of March 1915.

This new Order represented a significant extension of belligerent claims and was applied in the test case of the SS *Leonora*. The *Leonora*, intercepted whilst proceeding from Rotterdam to Sweden without calling at a British port, carried a cargo of coal exported through the agency of the German Government from the occupied territory of Belgium. The Prize Court, applying the test of the *Zamora* judgment concluded that the Order of February 1917 was a measure of reprisal not entailing neutrals 'a degree of

inconvenience unreasonable, considering all the circumstances of the case'. The Prize Court accordingly condemned the *Leonora* and her cargo as prize.⁴⁹⁹

Lord Cecil believed that the policy of keeping the Declaration of London 'alive' through a series of continual amendments was becoming a greater source of legal insecurity. The doctrine of continuous voyage was one of the more difficult areas under consideration at the time and in particular, a draft Order in Council was prepared with the purpose of abrogating Article 19 of the Declaration of London. The *Zamora* judgment therefore occurred at a most opportune time. This draft Order in Council, circulated to the Admiralty in March 1916, was in fact in two parts. The first was ultimately to be the Declaration of London Order in Council 1916 (to repeal parts of the Declaration of London), and the other was a draft of the Maritime Rights Order in Council, 1916 (which was to abrogate formally the Declaration of London).

The Maritime Rights Order in Council

The Maritime Rights Order in Council was issued on 7 July 1916 and in doing so, it both repealed the Declaration of London and set out the manner in which the Government would conduct the blockade. In a similar move, the French Government repealed the Declaration of London on the same day. The *Zamora* judgment therefore precipitated the formal withdrawal of the Declaration of London; Lord Cecil even admitted this in Parliament.⁵⁰⁰ The Maritime Rights Order in Council brought about a regression of international law to the traditional law of nations, but ensured that it was itself in accordance with international law by pointing out that the allies were also in agreement with the Order's contents and provisions. This return to pre-London Naval Conference international law highlights the fact that the body of international law recognised by the Prize Courts was still based on traditional custom and practice, and precedents set many

⁴⁹⁹ Lt Cdr W.E. Arnold-Forster RNVR, *ADM 186/603 CB 1554 The Economic Blockade 1914-1919* (Naval Staff Monograph, Trade Division, 1920), pp.43-44.

⁵⁰⁰ House of Commons Official Report, 23 August 1916, pp.760-61.

years before the First World War. The attempts made to codify international law by means of the Declaration of London had therefore proven insufficient to cope with the nature of economic warfare as it developed during the First World War.

The Final Result of the *Zamora* Case

The *Zamora* case did not however end with the ruling of the Appeal Court. In a letter to *The Times* on 5 September 1916, Thomas Gibson Bowles revealed:

The White paper [Cd. 8,322] now published discloses the fact that on April 25, 1916, Viscount Grey made, and on August 2 renewed, an offer to "agree formally" and to agree "in advance of the decision of the Court" that in case Sweden does not at any time like a decision on certain matters of our Prize Court, then his Majesty's Government "will submit that decision to arbitration after the war".⁵⁰¹

The case of the *Zamora* was duly brought up for international arbitration before the President of the Prize Court, Lord Sterndale,⁵⁰² and was argued on 16 and 17 December 1918, and 4 March 1919, before judgment was finally made on 31 March 1919.⁵⁰³

The Swedish Trading Company had always claimed that the *Zamora's* cargo was carried in good faith and was indeed bound only for Sweden. The claimants, to substantiate the apparently innocent and neutral nature of the company, produced many affidavits; these affidavits described topics such as the constitution and objects of the Swedish Trading Company. One affidavit of particular importance however was made by a Mr Greenwood on 13 August 1918 and was produced in evidence by the Crown:

In the month of February 1915 Gustaf Pott agreed with Max Daumichen the Austro-Hungarian Consul at Stockholm to hire to him the SS *Zamora* for the shipment of 3,500 tons of grain, 500 tons of copper and about 200 tons of other metals from New York to Stockholm. The *Zamora* was expected to arrive in New York about 12th March then next. The said Gustaf Pott was to receive from the Austro-Hungarian Consul-General a lump sum freight of £46,000. Marine and war insurance of the goods and freight were to be effected through Gustaf Pott for the account of the Austro-Hungarian Consulate-General at 3½ per cent.

After the arrival of the said SS *Zamora* at New York the said Gustaf Pott informed a Dr Karl Bittner (who during the earlier part of the war was attached to the Austro-Hungarian Legation at Stockholm and acted for the Austro-Hungarian Ministry of War in connection with purchases in or via Sweden) that the *Zamora* had begun to load 1,000 tons oats and 2,500 tons of wheat, of which the shippers were Jas. Carruthers & Co, New York, and the consignees B Ursells, Eftertraedare, Stockholm, and 400 tons of copper and 15 tons of nickel, of which the shippers were the American Smelting and Refining Company, New York and the consignees the Swedish Trading Company, Stockholm. The

⁵⁰¹ Thomas Gibson Bowles, 'Prize Courts and Arbitration. The *Zamora* Judgment.' *The Times*, 5 Sep 1916, p.10.

⁵⁰² Sir William Pickford. Appointed President of the Prize Court on 17 October 1918. Created Baron Sterndale on 14 November 1918.

⁵⁰³ de Hart, *Lloyds*, vol 8, p.347.

said Gustaf Pott further informed the said Dr Bittner that insurance would be effected in accordance with the agreement referred to in paragraph 4 above.

In May 1915, the said Gustaf Pott borrowed from the said Dr Bittner the nineteen policies... In borrowing the said policies for the purpose of procuring the release out of the British Prize Court of the SS *Zamora*, the said Gustaf Pott formally acknowledged that they were the property of the Imperial and Royal Austro-Hungarian Army Administration.

It was arranged that in communication between the said Gustaf Pott and the said Dr Bittner the SS *Zamora* should be referred to as *Onkel*.⁵⁰⁴

This damning evidence showed that the Austro-Hungarian Government initiated, financed and controlled the transaction through Mr Pott. It is not surprising that the Swedish Trading Company withdrew their claim shortly after the Crown produced this affidavit.⁵⁰⁵ The legacy of the *Zamora* lived on however and the rulings made during the original case and in the Appeal Court have contributed to many other cases⁵⁰⁶ and indeed in many other journal articles in the years following the *Zamora* case.

⁵⁰⁴ Ibid., p.351.

⁵⁰⁵ TS 13/787 *Various Affidavits Relating to the Zamora*. (1915). This document contained a number of affidavits relating to the SS *Zamora* being stopped and searched during several transatlantic voyages. It contained affidavits from shippers and recipients alike that none of the cargo (e.g. rubber seized 23 January 1915) was destined for enemy use. There is strong evidence of collusion by the shippers however as two other ships were detained carrying crude rubber in similar circumstances (*Kim* 28 November 1914 and *Sandefford* 28 November 1914 – both Norwegian).

⁵⁰⁶ Judicial Decisions, 'The Alwina', *American Journal of International Law*, vol.10, no. 3 (Jul. 1916), pp.641-653; Judicial Decisions, 'The Stigstad', *American Journal of International Law*, vol.13, no.1 (Jan. 1919), pp.127-133; Judicial Decisions, 'The Leonora', *American Journal of International Law*, vol.13, no.4 (Oct. 1919), pp.814-831; Judicial Decisions, 'The Proton', *American Journal of International Law*, vol.14, no.1 (Jan - Apr 1920), pp.264-268.

7. Humanitarian aspects of unrestricted submarine warfare and the Leipzig War Crimes Tribunal

No power will incur the odium of sinking a prize with all hands.⁵⁰⁷

The above quote from Corbett in 1911 demonstrates how stark the change was between 1911, when the idea of sinking a prize vessel with all hands seemed utterly abhorrent, and the peak of Germany's U-boat campaign in 1917 when it had become commonplace. Having analysed the rules and regulations concerned with the economic blockade, this chapter looks at humanitarian aspects of the use of submarines as commerce destroyers during the First World War. In order to do this, some legal opinions on the use of submarines have been considered before moving on to the implementation of unrestricted warfare and the ensuing trials at Leipzig in 1921 into alleged war crimes. The important naval cases brought before the Court in Leipzig are discussed in order to understand the nature of the 'atrocities' that had been committed.⁵⁰⁸

The 'just war' theory is a popular one in the literature of international law. The Latin terms *jus ad bellum* (the law governing going to war in the first instance) and *jus in bello* (the law covering the conduct of war) cover two main branches of international law. This chapter is not concerned with *jus ad bellum*, because the means by which Britain and Germany entered into the First World War and the idea of the war being 'just' are beyond the scope of this thesis and already the subject of a large body of literature.⁵⁰⁹ Of far greater relevance however is *jus in bello*. The conduct of the war by Britain and Germany and the legal justification of that conduct were very important. Like Best,⁵¹⁰ this chapter is

⁵⁰⁷ Corbett, *Maritime Strategy*, pp.272-3.

⁵⁰⁸ A detailed study of war crimes during the First World War which concentrated primarily on war crimes from the land war, is John Horne and Alan Kramer, *German Atrocities, 1914. A History of Denial* (New Haven and London: Yale University Press, 2001).

⁵⁰⁹ Some examples include Mombauer, *Origins* and Burk, *Sinews of War*.

⁵¹⁰ Best, *Humanity in Warfare*.

concerned with not only the humanitarian aspects of the war but also how the system of blockade and unrestricted submarine warfare affected them.

Pearce Higgins' Paper

With the submarine being a new weapon in the maritime war, it was not only the strategy and tactics associated with it that needed to be reviewed and developed. The position of the submarine within the international legal framework of war at sea also required consideration. A paper by Pearce Higgins,⁵¹¹ an expert on international law, who also sat on the *Zamora* committee, has been reviewed in order to highlight areas that applied not only to Germany's U-boats but also to Britain's use of mines by way of comparison. No formal discussions between Pearce Higgins and the Admiralty with respect to his paper on international law have been unearthed but the Admiralty was probably aware of his work in general because of his membership of the Sub Committee on Law (discussed later in this chapter). It is worth considering Pearce Higgins' paper in some detail as it discussed many fundamental issues regarding the introduction of the submarine into the sphere of naval warfare.

He began with a reminder of the seemingly obvious difference between warships and merchant ships from a belligerent's point of view. Enemy warships could be attacked without the need for any preliminary visits or demands for surrender by the attacker, although they always maintained the right of self-defence. A submarine was no different from any other warship except that the element of surprise was in a submarine's favour if it attacked whilst submerged. This was a very clear-cut situation and the manner in which warships of opposing sides can attack each other has remained this way throughout the history of war at sea. The case regarding merchant shipping was not quite so simple. Pearce Higgins rightly argued that international law required belligerents to differentiate

⁵¹¹ A. Pearce Higgins, *ADM 116/1865. Some Legal Problems Raised by the Use of Submarines in Naval Warfare* (London, 1918).

between enemy and neutral shipping. Again, this may seem obvious but it was an important principle when it came to the destruction of captured shipping. Until the First World War, the systematic destruction of enemy merchant shipping was rare, but Pearce Higgins cited several precedents for the sinking of captured enemy merchant vessels under international law in exceptional circumstances:

It was ordered by the American Government during the war of 1812-1814 and Dr Lushington⁵¹² during the Crimean War that it may be justified [sic] or even praiseworthy in the captors to destroy an enemy vessel. Russia during the war with Japan sank 21 Japanese vessels captured as prize and during the early stages of the present war the German Cruisers *Emden*, *Karlsruhe* and *Kronprinz Wilhelm* finding themselves unable to spare prize crews sank numerous captured British vessels after first removing crew and passengers as also did the *Moewe* later on.⁵¹³

The important point to note here was the final sentence mentioning the crews of these vessels. The 'atrocities' associated with German submarines during the First World War arose from the numerous occasions when the crews of merchant vessels (enemy and neutral) were not given the opportunity to abandon ship following a surprise attack or, more rarely, when they were deliberately targeted or left with no hope of survival. From a modern perspective, a distinction could be made between 'collateral damage', where lives were lost when merchant vessels were sunk for a military purpose but without the explicit intention of taking life, and crimes against humanity committed in the course of military operations such as the massacre of Vietnamese civilians by US troops in the village of My Lai.⁵¹⁴ Pearce Higgins was quite clear that 'it is a recognised rule of International Law that the crew, passengers and, if possible, the cargo together with relevant papers and documents must be first removed and placed in safety'.⁵¹⁵ He did not distinguish between neutral and enemy shipping so it can only be inferred that he meant both.

⁵¹² Stephen Lushington (1782–1873). An Admiralty court judge and later a member of the judicial committee of the Privy Council.

⁵¹³ Pearce Higgins, *ADM 116/1865*, p.2.

⁵¹⁴ See Michael Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*. (New York: Penguin, 1977), p.309.

⁵¹⁵ Pearce Higgins, *ADM 116/1865*, p.2.

It was quite clear that provision should be made for the safety of passengers, crew and papers. During the American Civil War, Captain Semmes⁵¹⁶ of the *Alabama* either placed personnel in safety or released the ship if he could not accommodate them.⁵¹⁷ A number of charges of cruelty were made against Semmes but no evidence could be found that he had inflicted unavoidable hardship on those he captured.⁵¹⁸ Historical precedents therefore existed in practice and in international law for the destruction of enemy merchant shipping but only if the safety of the passengers, crew and ship's papers was assured.

From the arguments of this distinguished expert, one might reasonably conclude that submarine warfare should have been outlawed in its entirety. Innovative weapons⁵¹⁹ have been judged illegal and inhumane throughout the history of warfare, before the hard facts of reality have sunk in and all potential belligerents have realised that they need to employ such weapons to avoid defeat.⁵²⁰ Pearce Higgins referred to the naval prize regulations of several countries,⁵²¹ to support the internationally recognised nature of the duties of warships towards merchant ships. As if these were not sufficient, Article 3 of the 6th Hague Convention 1907 stated that a belligerent warship destroying an enemy merchantman was 'under the obligation of providing for the safety of the persons as well as the preservation of the papers on board.' Ironically, the clause was inserted at the insistence of Austria-Hungary's delegate.⁵²²

The rules regarding the destruction of neutral merchant ships again originated from Prize Law but were embodied in Chapter four of the Declaration of London. Three Articles in this Chapter related to the destruction of vessels and the safety of personnel:

⁵¹⁶ Semmes, Raphael (1809-77). One of the most aggressive and successful Confederate naval raiders of the American Civil War.

⁵¹⁷ James W. Garner, 'Some Questions of International Law in the European War', *American Journal of International Law*, vol.9, no. 3 (Jul. 1915), p.620.

⁵¹⁸ Ibid. Semmes was investigated by Mr John A Bolles, Solicitor of the US Navy.

⁵¹⁹ From the longbow through firearms to nuclear weapons.

⁵²⁰ This subject has been considered in much greater detail by Bobbitt, *Shield of Achilles*.

⁵²¹ French Instructions of 1912 (Art xxviii, SS 153, 154); German Naval Prize Regulations 1914 (Art 116) and the Italian Naval Prize Regulations.

⁵²² Baron Charles de Macchio.

Art. 48. A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

Art. 49. As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

Art. 50. Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.⁵²³

Whilst Article 48 was clear regarding the treatment of captured vessels, Article 49 still provided a get-out clause for the Commanding Officers of warships involved in a capture. The key to Article 49 was the expression 'success of operations'. In all attempts to codify maritime law, there always seemed to be an allowance for the exercise of a military prerogative. Article 49 could almost have been written with the submarine in mind, given that a submarine was unable to take a captured vessel into port. It certainly could not spare the manpower to make up a prize crew. It is worth noting however that Article 49 referred to vessels which had already been captured, so this would only have applied to the submarine once it had surfaced and captured the vessel. Article 50 also reiterated the requirement for persons to be placed 'in safety'. No clear definition for 'in safety' was given but this phrase should be borne in mind when considering the attacks by submarines discussed later. Until the Russo-Japanese war, Pearce Higgins noted that instances of neutral vessels being destroyed by belligerents were rare. The practice adopted by the Russians during that war was akin to that adopted by German submarines during the First World War, making use as they did of provisions in Russian Prize Law, which specified when it might have been appropriate to sink captured neutral vessels. The 1888 British Naval Prize Manual also specified such provisions.⁵²⁴

In the second part of his paper, Pearce Higgins applied the considerations of international law to the specific case of the submarine. The submarine's 'inherent defects'

⁵²³ See Appendix 1.

⁵²⁴ Thomas Erskine Holland, *A Manual of Naval Prize Law; Founded upon the Manual... by G Lushington* (London: Eyre & Spottiswoode, 1888).

made it, in his view, 'ill-designed' to comply with the law. More fundamentally to this thesis, it should be asked whether international law was sufficiently flexible to cope with the introduction of the submarine as a weapon of maritime warfare. The rapid development of military technology, along with the tactics and strategy appropriate for its most effective deployment, was very much at odds with the much slower evolution of a framework of international law that would attempt to preserve the customary rights of civilians and neutrals. In 1915, Sir Edward Grey presented a declaration to the Governments of neutral countries, in which he summarised the duties of warships when attacking merchant vessels. He continued by saying:

A German submarine, however, fulfils none of these obligations. She enjoys no local command of the waters in which she operates. She does not take her captures within the jurisdiction of a Prize Court. She carries no prize crew which she can put on board a prize. She uses no effective means of discriminating between a neutral and an enemy vessel. She does not receive on board for safety the crew of the vessel she sinks. Her methods of warfare are therefore entirely outside the scope of any of the international instruments regulating operations against commerce in time of war.⁵²⁵

The first point to consider from Grey's unequivocal statement is that his comments applied equally to any nation's submarines, not just Germany's. Likewise, viewed from a modern perspective, a submarine is capable of exercising some local command of the waters in which she operates although technical limitations (including her limited horizon and vulnerable pressure hull) drastically reduce the scope of this local command. Participation of a submarine in a distant blockade did not match the traditional image of a blockading warship, but the use of submarines during the First World War was anything but traditional. Grey doubtless had in mind a surface warship maintaining a deterring presence.

The most important point in Grey's statement from a humanitarian point of view concerned the submarine's inability to provide for the safety of the passengers and crew of the vessels they have attacked. Since a submarine could not spare any of its crew to act as a prize crew, its only resort was to destroy the vessel. The Prize Law discussed earlier

⁵²⁵ E Grey, *Declaration to the Governments of Neutral Countries* (Parliamentary Papers No 6, 1915).

stated that destruction of merchant vessels should be an exception to the rule but for the submarine, destruction was the rule.

Pearce Higgins also addressed a number of German contentions. The first was simply that the introduction of new weapons and conditions of warfare demanded the modification or alteration of the old rules and laws of warfare. Pearce Higgins rejected this, pointing out that these rules of warfare had accommodated other important innovations in naval warfare. By way of example, he discussed the introduction of steam, torpedoes and torpedo boats and quoted from Admiral Bourgois of the French Navy in 1886:

The advent of the torpedo, whatever its influence on naval materiel has in no way changed international treaties, the Law of nations or the moral laws which govern the world. It has not given the belligerent the right of life and death over the peaceful citizens of the enemy or neutral state.⁵²⁶

The submarine however was not just a new form of propulsion or a new weapon but represented an entirely new form of naval warfare. A modern view would lend greater sympathy to Germany's contention that it required some change in the rules of warfare at sea.

Germany's second contention was that the submarine's comparatively fragile construction rendered it incapable of conducting traditional visit and search operations, which therefore mitigated their non-compliance with the requirements regarding the safety of merchant crews. Pearce Higgins made a good point, noting that if a belligerent chose to exercise its rights to capture merchant shipping then it should do so in accordance with the law, or not at all. The limitations inherent in the submarine could therefore not be appealed to in order to justify its success; there was no 'handicapping' system in international law. He finished this point off by stating 'New weapons are illegitimate if their use necessarily entails violation of fundamental principles.' This was interesting as it raised the question of which comes first, the regulations or the weapon? In defence of international law, it should be founded on fundamental humanitarian principles, noting the

⁵²⁶ Admiral Bourgois, 'La Guerre de Course, la Grande Guerre et les Torpilles,' *Nouvelle Revue*, vol 2 (1886), p.499.

differences between combatants and non-combatants. If these principles were subject to amendment at every step in the development of new technology, they would no longer be fundamental. This could however lead international law to develop into a state where it was too prescriptive to cope with technological advances in weapons and tactics; their introduction could be used to challenge and expose loopholes in the existing regulations. Regardless of all these technical issues, there remained the elementary point that, whatever the new weapon or method of operation, its deployment should not impose unnecessary suffering.

Germany's third contention was that merchant ships should not be offensively armed, in order that submarines could board them without fear of a counterattack. There was no contention that any nation could allow its vessels to be *defensively* armed, given that the inalienable right to self-defence was and is a cornerstone of international conflict law, but it was certainly questionable whether a merchant vessel with offensive armament could maintain its status as a merchant ship. If the defensive capability were to be removed in favour of making the job of the submarine easier then the rules of visit and search under Prize Law would be skewed disproportionately in favour of the belligerent. The true object of this German contention was most likely Britain's use of Q-ships, with their hidden defences used only when a submarine surfaced and attempted to capture an 'innocent' merchant vessel. One infamous case that exposed the dubious legal status of Q-ships was that of Captain Fryatt, captured and executed by the Germans for allegedly being the Commanding Officer of a Q-ship.

The next German contention was more esoteric and concerned the desire to reduce the incidence of destroyed prizes. The method proposed was for neutral ports to permit prizes to be brought in for holding prior to condemnation by a Prize Court. This was in fact formalised in Article 23 of the 23rd Hague Convention of 1907 but did not impose a duty of reception on neutral states. This Article was not ratified by Britain (or the US,

Japan and Siam) and Pearce Higgins suggested that there should be no exception for the case of the submarine, as this would only make it easier for them to take prizes.

Germany's final contention was that the policy of unrestricted warfare introduced in February 1917 was in response to British illegalities arising from the blockade of Germany. Here Pearce Higgins rightly commented that 'no reprisals directed against enemy and neutral ships alike can be permitted which violate fundamental laws of humanity involving the certainty of death or mutilation to non-combatants, neutral as well as enemy.'⁵²⁷

In the final section of his paper, Pearce Higgins made a number of generally impractical proposals regarding the future of submarines, which served to detract from his well-reasoned arguments throughout the earlier parts of his paper. His proposals, made from a rather abstract and academic viewpoint, made no mention of any consultation with the Admiralty; no Admiralty papers referring to Pearce Higgins' paper have been unearthed.

Pearce Higgins finished his paper with three conclusions/suggestions. The first was that the submarine could only be a legitimate weapon of war against commerce if it complied with the existing laws governing conflict at sea. He noted that in its then current stage of development, the submarine did not conform to the requirements of existing laws and furthermore, the use of torpedoes was not an appropriate method of stopping a merchant vessel or overcoming its resistance to search. Second, he stressed that every effort should be made to re-iterate the rules requiring a visit or summons prior to any destruction of a merchant vessel otherwise the warship's Commanding Officer would in fact be guilty of committing an act of piracy. Next, due to the 'inherent' problems with submarines, their use against any merchant vessels should be declared illegal and any infringement by a belligerent should cause the submariners concerned to be classed as illegitimate combatants. As an interesting final point, he noted that the British instructions

⁵²⁷ Pearce Higgins, *ADM 116/1865*, p.6.

for defensively armed merchant ships⁵²⁸ stated that British and Allied submarines and aircraft had orders not to approach friendly or neutral merchant vessels and that this instruction should in fact be adopted as a rule in international law. These instructions meant that merchant ships could attempt to defend themselves from any approaching submarine. Pearce Higgins' proviso to this rule would be that a submarine would only be permitted to approach a merchant vessel in order to provide assistance if the vessel appeared to be in distress.

It is not clear who commissioned Pearce Higgins' paper or whether it was an unsolicited work but given that it was produced on 4 November 1918, his final comments seem rather pertinent:

It has been difficult to separate questions of naval policy from those of pure law, but while an attempt to do this has been made there are many questions which will suggest themselves to technical naval experts which will call for the application of legal principles. It is hoped that the latter is sufficiently stated to support the former.⁵²⁹

The paper might therefore have been produced in the knowledge that an Allied victory was certain and could thereby provide legal 'ammunition' for use against Germany during peace negotiations given that its employment of U-boats had been incompatible with the existing law of nations and enduring morality.

Grotius Society Paper

Almost in parallel to the paper produced by Pearce Higgins, members of the Grotius Society⁵³⁰ carried out a study regarding the legal status of submarines.⁵³¹ After providing a brief overview of the history of the submarine, the report considered the changing nature of vessels in war and of mercantile shipping. In essence, it was of the opinion that with such changes as the defensive arming of merchant shipping and the introduction of the

⁵²⁸ 'Arms for Defence: Admiralty's Orders for Merchantmen', *The Times*, 3 March 1916, p.8.

⁵²⁹ Pearce Higgins, *ADM 116/1865*.

⁵³⁰ The Grotius Society (1915-1954) was founded with Lord Reay as President and Professor Goudy, Regius Professor of Civil Law, Oxford, as Vice-President. The aim of the Society was 'to afford an opportunity to those interested in International Law of discussing from a cosmopolitan point of view the acts of the belligerent and neutral States in the present war and the problems to which it almost daily is giving birth.'

⁵³¹ Goudy, and others, *Report of the Committee on the Legal Status of Submarines* (London, The Grotius Society, 1917).

submarine, the ability to distinguish between acts of offence and defence was diminished. From a purely practical point, it was also noted that because of the great size of some merchant vessels such as mail steamers, effective searching could only be carried out once such vessels had been taken into port. On the more relevant subject of submarines and the destruction of merchantmen:

The law and practice prior to the present War may be noticed in just a few words. It was anything but settled. It seems, however, to be agreed by the jurists of the Entente Powers and of all neutral states that 'unrestricted submarine warfare' as conducted in the present war by the Central Powers is contrary to the laws and usages of war as hitherto generally accepted by the whole civilised world.⁵³²

In a similar way to the Pearce Higgins paper, this report considered some of the exceptions to the generally recognised view that merchant vessels should not be sunk. In the case of enemy merchantmen, the report stated that an argument could be made for the destruction of the ship and/or cargo but the safety of the crew should remain paramount at all times, particularly if neutral passengers were on board. The Grotius Society's paper also gave more background on the subject of bringing prizes into neutral ports by citing practices during the Russo-Japanese War. The paper reported that the traditional rule that a neutral merchantman must never be destroyed was first challenged in the Russian Naval Instructions of 1869 (and subsequently by the US in 1898,⁵³³ by Japan in 1904, and by Germany during the 1908 Naval Conference in London). Under Russian regulations in 1900 and 1901, Russian commanders were empowered to destroy their prizes, whether enemy or neutral, under circumstances such as bad condition, small value of the prize, risk of recapture, distance from Imperial ports or their blockade, danger to the capturing vessel, or danger to the success of the capturing vessel's operations. One of the tenets of the Russian view was that states with only a few ports would be put in a position of unjustifiable inferiority in the absence of such regulations. In order to meet Russia on equal terms, Japan reluctantly changed its Prize Regulations in 1904 but refrained where possible from the practices adopted by Russia and denounced the departure from tradition.

⁵³² Goudy, and others, *Submarines* (1917), p.4.

⁵³³ The US withdrew the Naval Code of 1900, which contained the Instructions of 1898, on 4 February 1904.

The Russian proposal was supported by Germany, but opposed by Britain, the US and Japan at the 1907 Hague Peace Conference. This matter was resolved by Article 23 of Convention VIII of the Conference 'whereby a neutral power may allow prizes to enter its ports, whether under convoy or not, when they are brought there to be sequestered pending the decision of a Prize Court.' The question of destruction however could not be resolved and it was passed on to the London Naval Conference of 1908.

The Declaration of London finally resolved this problem with a decree that neutral vessels should not be sunk. There were of course exceptions to this as Pearce Higgins discussed earlier, but in principle, it was incumbent upon the captor to establish that a neutral vessel was only sunk in the face of an 'exceptional necessity.' With this statement, the way was left clear for 'exceptional necessity' to be interpreted as 'military necessity'. It was the admission of this exception that the Grotius Society paper claimed was a fatal mistake in that it provided a partial defence for Germany's decision to adopt unrestricted submarine warfare.

The Grotius Society paper made thirteen recommendations in all. It recommended for example that submarines be permitted the rights of visit, search and seizure, in keeping with any other vessel of war, but also that submarines should not be permitted to conduct dived operations in neutral waters. The final recommendation was that, 'assuming the destruction of merchantmen (not chargeable with resistance etc), to be prohibited, if an enemy or neutral merchantman be destroyed, the officer responsible should be regarded as a war criminal and liable to be punished as such if captured.'

Committee of Enquiry into Breaches of the Laws of War

The legality of Germany's actions during the First World War was investigated under the auspices of the Committee of Enquiry into Breaches of the Laws of War. On 1 November 1918 Sir John Macdonell⁵³⁴ was asked by the Attorney-General, Sir Gordon

⁵³⁴ Sir John Macdonell (1845–1921). Renowned jurist and member of the Grotius Society.

Hewart,⁵³⁵ to chair a committee of experts to advise the Cabinet on alleged breaches of international law committed by Germany during the First World War, and to examine what proceedings should be taken against those responsible. Again, the Allied victory was by this stage inevitable and the Committee could be seen as gathering 'ammunition' for a 'victor's justice'. It was charged to enquire and report upon the following specific areas:

The facts as to breaches of the laws and customs of war, affecting members of the British armed forces or other British subjects, committed by the forces of the German Empire and their allies on land, on sea, and in the air during the present war;

The degree of responsibility for these offences attaching to particular members of the German Forces, including the German General Staff, or other highly placed individuals;

The Constitution and procedure of a tribunal appropriate to the trial of these offences;

Any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Committee find it useful and relevant to take into consideration.⁵³⁶

An interim report of the Committee was presented to the Attorney-General in January 1919.⁵³⁷ Of greater relevance, was the Sub Committee for Offences at Sea,⁵³⁸ also chaired by Sir John Macdonell. The members of this committee included Captain Brandon⁵³⁹ and Admiral Hall⁵⁴⁰ (both from the Admiralty) and Sir Maurice Gwyer (Ministry of Shipping),⁵⁴¹ in addition to a number of legal members. Pearce Higgins was also involved in the proceedings as a member of the Sub Committee on Law.

So what was the relevance of the Sub Committee for Offences at Sea? This was where the detailed examination of submarine 'war crimes' really began and it laid the foundation for the subsequent investigations and war crimes trials at Leipzig a few years later. An interim report was produced in a remarkably short time, a mere ten weeks after the Committee's formation and was clearly the result of much effort by the members of the

⁵³⁵ Gordon Hewart, first Viscount Hewart (1870–1943). Became Solicitor-General in 1916, was made a member of the Privy Council in 1918; and became Attorney-General in 1919.

⁵³⁶ John Macdonell, *TS 26/13 Interim Report from the Committee of Enquiry into Breaches of the Laws of War* (1919).

⁵³⁷ Ibid.

⁵³⁸ Other Sub-Committees existed for Law, Offences on Land and Offences in the Air.

⁵³⁹ Captain Vivian Roland Brandon Royal Navy (1882–1944). In 1914, Brandon took over the German section of the Naval Intelligence Division, becoming assistant Director of Naval Intelligence in 1918.

⁵⁴⁰ Hall, Sir (William) Reginald 'Blinker' (1870–1943). Hall was the Director of the Naval Intelligence Division from October 1914 until the end of the war. He led the re-organisation of naval intelligence and developed a sophisticated network for intelligence gathering and analysis, including the famous Room 40. Admiral Sir William James, *The Eyes of the Navy. A Biographical study of Admiral Sir Reginald Hall* (London: Methuen & Co Ltd, 1955).

⁵⁴¹ Sir Maurice Linford Gwyer (1878–1952). Lawyer and civil servant.

Committee. The report made nine recommendations covering: jurisdiction; requests to neutral Governments for the surrender of offenders; arrest and surrender of German naval commanders; constitution of the tribunal; the law to be applied by the tribunal; power of punishment of the tribunal; procedure of the tribunal; rules of evidence to be applied by the tribunal; and finally, the charges to be preferred before the tribunal. There were fourteen broad headings for these charges but those of maritime interest were Indiscriminate Bombardment from the Sea, Illegal Methods of Submarine or other Naval Warfare, and Destruction of Hospital Ships. There was also much discussion on the differing military laws enforced by Britain, Germany and France, contained in a number of papers by eminent academics. Interestingly, the position of the Kaiser and the notion of acting under Superior Orders were also considered, and are discussed later in this chapter.

The interim report of the Sub-Committee dealing with Offences at Sea⁵⁴² conducted an investigation into the 'outrages committed by German submarine and other naval commanders at sea'. The result of this investigation was a series of lists that specified categories of German personnel against whom proceedings should be brought for breaches of the laws of war and humanity. One paragraph in particular listed some of the most notorious cases:

With regard to the list of Officers responsible for outrages by submarines, it may be of interest to note that the Officers responsible for some of the most notorious cases, e.g. Kapitänleutnant Schwieger, who sank the "Lusitania", and to whom is attributed the first deliberate attack on a Hospital Ship (the "Asturias"); Kapitänleutnant Schneider, who sank the ss "Arabic"; Oberleutnant Pustkuchen, who is believed to have torpedoed the cross-Channel ss "Sussex"; and Kapitänleutnant Paul Wagenführ, who is suspected of having sunk the ss "Belgian Prince" and, after taking the crew onboard his submarine, suddenly submerged and left them to their fate, are dead; and that at present there is not, unfortunately, any evidence to show by whom the Belgian refugee ships "Amiral Ganteaume" and "Harpalyce", and the hospital ships "Asturias" (which had survived an earlier attack), "Gloucester Castle", "Dover Castle" and "Königin Regentes" were sunk.⁵⁴³

The Lists

The first of the lists produced by the Sub-Committee dealing with Offences at Sea, List I, included the officers in positions of high authority. The principal positions were:

⁵⁴² Macdonell, *FO 608/245 114764 Interim Report of the Sub-Committee dealing with Offences at Sea* (1918).

⁵⁴³ Ibid.

the Imperial Navy Office (presided over by the Secretary of State⁵⁴⁴); the Emperor's Naval Cabinet,⁵⁴⁵ the Admiralty or Naval Staff;⁵⁴⁶ the Commander-in-Chief of the High Seas Fleet;⁵⁴⁷ and the Admiral Commanding the Naval Corps in Flanders.⁵⁴⁸ The absolute head of all matters in the German Navy was of course the Kaiser himself, but separate matters were being undertaken to investigate the position of the Kaiser.⁵⁴⁹ In 1918, the Naval Intelligence Department compiled further details on the composition of the German naval hierarchy and its history, from which the following table was taken:

Table 20: Heads of the German Navy⁵⁵⁰

Date	Secretary of State of Imperial Navy Office	Chief of Admiral Staff	Commander-in-Chief of High Seas Fleet	Remarks
Aug 1914-Feb 1915	Grand Admiral von Tirpitz	Admiral von Pohl	Admiral von Ingenohl	Von Ingenohl's supersession is attributed to the ill success of the High Seas Fleet on 28 August 1914 and 24 January 1915.
Feb 1915-Aug 1915	Grand Admiral von Tirpitz	Admiral Bachmann	Admiral von Pohl	Bachmann's supersession was probably due to the difficulties in which the German Government became involved through the sinking of the SS <i>Arabic</i> .
Sep 1915-Jan 1916	Grand Admiral von Tirpitz	Admiral von Holtzendorff	Admiral von Pohl	Von Pohl had been in a bad state of health for some time and died on 23 February 1916, four weeks after handing over command of the High Seas Fleet to Scheer.
Jan 1916-Mar 1916	Grand Admiral von Tirpitz	Admiral von Holtzendorff	Admiral Scheer	Tirpitz' retirement was the outcome of the Imperial Chancellor declining to adopt at that time Tirpitz' policy of unrestricted submarine warfare.
Mar 1916-Jul 1918	Admiral von Capelle	Admiral von Holtzendorff	Admiral Scheer	The retirement of von Holtzendorff and that of von Capelle, which followed almost immediately, were undoubtedly due to the failure of the submarine campaign.
Aug 1918-Sep 1918	Vice Admiral Behncke	Admiral Scheer	Admiral Ritter von Hipper	It is not certain that Behncke ever took over the duties of Secretary of State, though he was undoubtedly nominated for this post, which eventually was given to Ritter von Mann.
Sep 1918-Nov 1918	Vice Admiral Ritter von Mann Edler von Tiechler	Admiral Scheer	Admiral Ritter von Hipper	Oversaw the surrender of the German navy at the end of the war.

⁵⁴⁴ Secretary of State was the ultimate authority under the Kaiser for matters of naval administration. He attended the Bundesrat and Reichstag to state and defend policy and estimates.

⁵⁴⁵ Headed by a senior Flag Officer in a position similar to an Aide-de-Camp to the Kaiser.

⁵⁴⁶ A body intended to provide specialist naval technical advice to the Kaiser. It also produced plans and detailed operations e.g. the order for commencement of unrestricted submarine warfare came from Admiral von Holtzendorff, then the chief of the Naval Staff.

⁵⁴⁷ The submarine flotillas based in German ports were under the command of the Commander-in-Chief of the High Seas Fleet.

⁵⁴⁸ The submarine flotillas based in Flanders were under the command of the Admiral Commanding the Naval Corps in Flanders.

⁵⁴⁹ Macdonell, *TS 26/13*, p.32.

⁵⁵⁰ Naval Intelligence Department, *CB 1182A*.

The names on List II were those where *prima facie* evidence existed to connect each of the named officers and Commanding Officers of submarines with at least one sinking without warning, and acts of brutality and callousness, even if they were operating under orders of unrestricted U-boat warfare, as such acts were believed to be in excess of these orders. The inclusion of names on List III was for reasons very similar to List II, except that no acts of brutality or callousness were associated with their actions. List IV covered a number of incidents that could not be connected directly, or with any *prima facie* evidence to, any particular officer or submarine but the Admiralty had good reason to believe that the officer or named submarine was responsible. List V did not relate to submarines but instead to the commanding officers of the German cruisers *Brummer* and *Bremse*. They were accused of sinking destroyers (which they were entitled to attack, without warning, being enemy combatants) and merchant vessels of the Scandinavian Convoy on 17 October 1917, in a manner similar to the submarines i.e. with no warning of attacks, no time given to abandon ship, and no effort made to rescue the survivors. The inclusion of this last category in the lists may well have served to divert attention away from the submarines (common to both sides in the First World War) and instead towards the Germans and the way in which they chose to wage the war.

Principles of the Law Governing War on Commerce

A German document entitled Principles of the Law Governing War on Commerce⁵⁵¹ was in the possession of the Naval Intelligence Department in January 1918. It is not clear how the document was obtained but the preliminary remarks by the translator included a note stating 'it is not surprising that the Germans regard this book as one which *must not fall into the hands of the enemy*'. In its preface, the document purported to be 'a brief exposition of the law governing war on commerce' and as such was intended to be a set of principles that supplemented the existing German Prize Regulations. Where appropriate,

⁵⁵¹ Naval Intelligence Department, *FO 608/245 NA 114764, CB 01408 Principles of the Law Governing War on Commerce* (Admiralty Staff, Berlin, 1918).

this document also cross-referred to the Prize Regulations. The first Article of interest concerned the definition of resistance:

A neutral is to be treated as an enemy ship if she offers active resistance to the measures authorised under Prize Law. An attempt to escape does not in itself constitute active resistance, it justifies, however, the application of force until the ship desists from such an attempt... An attempt to escape renders the ship suspect and therefore justifies her being captured and brought into port without further formality... Active resistance does not only consist, however, in the ship herself offering direct and active resistance to capture, such as firing on, or attempting to ram a war vessel. It is constituted just as much by the ship held up summoning the assistance of hostile war vessels in the vicinity and causing them to attack the German war vessel in order to facilitate escape.⁵⁵²

These rules, intended primarily for surface ships, did not yet make any explicit considerations for submarines. It could be argued that for a merchant vessel to call up a friendly warship to attack the enemy warship as a form of self defence, would be quite a reasonable act for a vessel under attack and unable to defend itself. It could however be countered from a German perspective that if a vessel was rightly seized as a prize then it would be unfair for an attack to be made against any warship that was conducting itself in accordance with the generally recognised principles of prize law. Articles such as that above were already open to some interpretation but the rules regarding submarine operations were even more wide-ranging and varied. Section XVI covered the subject of submarines and opened with the statement:

Submarines are to be guided in the first instance by the special orders which they receive. If they are waging war against commerce in accordance with the Prize Regulations, they are to observe the foregoing articles, except in so far as Articles 42 and 43 below permit them to adopt a different procedure.⁵⁵³

Right from the opening of this section, it became clear that whatever the existing regulations may have stated, the orders given to the submarine's Commanding Officer would always take precedence. This did not bode well for the unsuspecting merchant vessel, deluded into thinking that he had some vestigial rights under the Prize Regulations of Germany. The situation for the merchant vessel soon worsened. Article 42 stated:

⁵⁵² Ibid., Article 25.

⁵⁵³ Ibid., Article 41.

When holding up a ship, submarines, instead of firing blank rounds, may at once fire live shells across her bows, as it is generally impossible to see blank [sic] rounds at any great distance. [German Prize Regulations Article 81] Submarines have the right to order the Ship's Papers of a vessel held up to be brought alongside in a boat. Prize Regulation No. 81 no longer applies in the case of submarines.⁵⁵⁴

This particular extract can really be considered in two parts. The first was a concession for submarines to fire an unspecified number of warning shots with live ammunition. The rule for surface ships⁵⁵⁵ allowed them to fire two blank rounds and, if necessary, a live shell. There is an inconsistency here. If a surface ship fires blank rounds, it is likely to be from a longer range, the visual horizon from a surface ship being greater than that from the bridge or casing⁵⁵⁶ of a submarine. Blank rounds are less visible when fired from a surface ship than from a submarine, the submarine being at a much shorter range from the target vessel. The rule appears to be the wrong way round but, as written, it gave the submarine permission to use live ammunition at an earlier opportunity, thereby greatly increasing the risk of damage to the merchant ship. The second part of Article 42, concerning the bringing alongside of the ship's papers in a boat was not entirely clear because the rule appears to have been rescinded in the case of submarines; in the subsequent Article, reference was made to papers being brought alongside. Again, there is an inconsistency here that cannot be easily explained.

The final Article in this section on submarines concerned the examination of merchant vessels. It dealt primarily with the actions permitted to the submarine's Commanding Officer when faced with neutral and enemy merchant ships:

If it is established without doubt that the ship held up is an enemy vessel and she can not be brought in, a search of the ship is unnecessary. She can simply be informed by signal that within a reasonable time the crew must abandon her with the papers. After being abandoned, the ship is to be sunk. When the Commanding Officer has satisfied himself that his order has been understood, but nevertheless the crew have not obeyed it, he will compel them to do so by using force.⁵⁵⁷

When faced with a neutral ship, further steps were required before escalation justified sinking:

⁵⁵⁴ Ibid., Article 42.

⁵⁵⁵ Ibid., Article 5.

⁵⁵⁶ The part of the submarine's 'deck' above the waterline when surfaced.

⁵⁵⁷ Naval Intelligence Department, *CB 01408*, Article 43.

In the case of a neutral ship, the ship's papers and cargo papers should be examined when brought alongside before any further action is taken. If the Commanding Officer is satisfied that his order to bring the ship's papers alongside has been understood, but it is not complied with by the neutral ship, he is justified in threatening the use of force. If the neutral ship still fails to obey, she is to be considered as offering active resistance and consequently to be treated as an enemy vessel provided that the Commanding Officer has satisfied himself that the refusal to obey orders can not be due to a misunderstanding.⁵⁵⁸

These rules, although allowing for the sinking of merchant vessels under certain circumstances, did specify that the Commanding Officer was to satisfy himself that his orders had been clearly understood, and would appear to have been quite reasonable in their approach to the situation. The orders under which submarine Commanding Officers were to operate was soon to change however, as the following captured documents indicated.

Orders for Ruthless Submarine Warfare

The first order to be considered came from Admiral von Holtzendorff, Chief of the Admiral Staff in January 1917; it was signed 'By Order of His Majesty' so it clearly came with the highest authority, an important point when considering potential war crimes later in this chapter. The order authorised a significant escalation in the war against Britain and its allies:

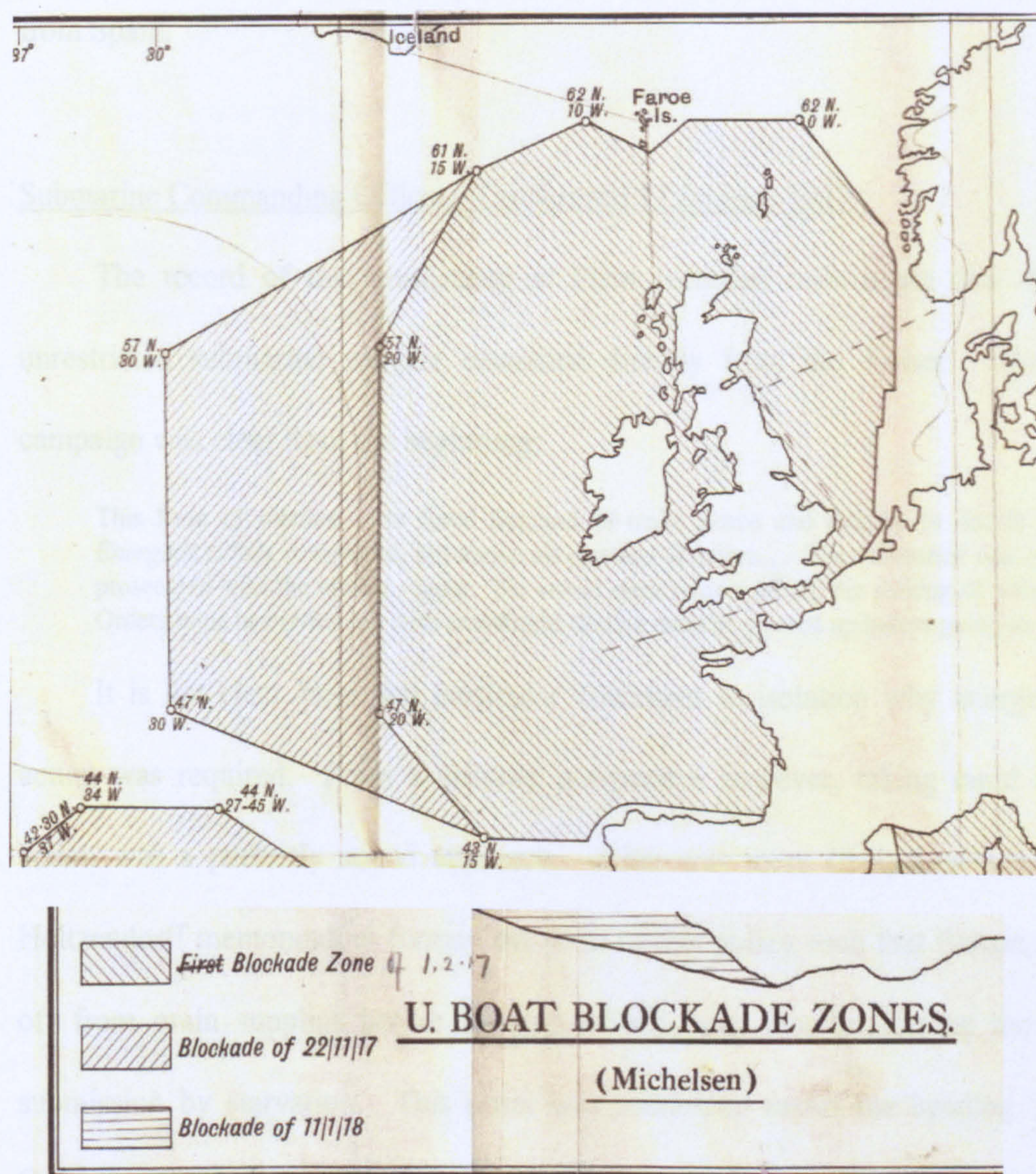
(1) From 1 February 1917 onwards, every enemy merchant vessel encountered within the barred area [see chart below] is to be attacked without delay. Hospital ships bearing the prescribed markings are excepted from this rule provided they are encountered outside the area bounded by the lines Ushant-Land's End and Flamborough Head-Terschelling; also hospital ships encountered within the last-mentioned area up to midnight on 3-4 February. Neutral steamers, Belgian Relief ships and unarmed enemy passenger steamers are to be dealt with in accordance with the Prize Regulations up to midnight of 10-11 February within the barred area [;] from then onwards, they are to be treated as enemy ships within the whole of the barred area. Neutral sailing vessels are to be dealt with according to Prize Regulations up to midnight of 10-11 February within the barred area of the North Sea and up to midnight of 28 February-1 March in the rest of the barred area.

(2) Outside the barred area, unarmed merchant vessels are to be dealt with according to the Prize Regulations. Armed merchant vessels are to be attacked without delay.

(3) In order to intimidate neutral shipping, it is important that the initial effect produced shall be as striking as possible. Later on, it is more important that the stations in the barred area shall be occupied as continuously as possible.⁵⁵⁹

⁵⁵⁸ Ibid.

⁵⁵⁹ Naval Intelligence Department, *FO 608/245 NA 114764, CB 01360 German Orders For Ruthless Submarine Warfare* (Admiralty Staff, Berlin, 1917), note from von Holtzendorff dated 12 January 1917.

Figure 3: Chart of Germany's Submarine Blockade Zones⁵⁶⁰

The order concluded by explaining the division of responsibilities between the High Seas Fleet and the Flanders Naval Corps and re-iterating that the order must not fall into the hands of the enemy. Other notes in this series included an update on the bringing in of prizes (marked SECRET!),⁵⁶¹ and a note on US and Dutch steamers (marked MOST SECRET!).⁵⁶² There was also a reminder (also marked MOST SECRET!)⁵⁶³ which gave details of subjects such as the Timber Agreement with Sweden;⁵⁶⁴ rescinding of the

⁵⁶⁰ Gibson and Prendergast, *Submarine War*, p.138.

⁵⁶¹ Naval Intelligence Department, CB 01360, note from Leader of Submarines dated 17 January 1917.

⁵⁶² Ibid., unsigned note from Admiralty Staff dated 18 January 1917.

⁵⁶³ Ibid., unsigned note from Admiralty Staff dated 26 January 1917.

⁵⁶⁴ In late 1916, Sweden, concerned that the Germans would not allow the transport of timber across the North Sea, in turn threatened to withhold the export of iron ore to Germany unless the Germans would allow the transport of timber from Sweden to Britain. The result was a rare three-way agreement between the adversaries mediated through a neutral power. See Percival S. Ridsdale, 'War's Destruction of British Forests', *American Forests*, vol.25, May (1919), p.1027.

promise to allow Danish foodstuffs to go to Britain; and safe-conduct rules for fruit ships from Spain.

Submarine Commanding Officers' Conference 17 January 1917

The record of this conference at Pless recorded once again that the orders for unrestricted submarine warfare emanated directly from the Kaiser. The aim of the campaign was clear from the beginning:

This form of warfare is to force England to make peace and thereby to decide the whole war. *Energetic* action is required, but above all *rapidity* of action... The submarine war is therefore to be prosecuted with the utmost vigour. No vessel must remain afloat, the sinking of which is authorized. Orders must be carried out with exactitude, doubts must be cleared up before going to sea.⁵⁶⁵

It is not clear from this particular document in isolation why energetic and rapid action was required. From a military perspective however, taking rapid and energetic action was a perfectly sound approach. What was more likely however was that the Holtzendorff memorandum formed the basis of this policy such that Britain should be cut off from grain supplies before the end of the year, thereby forcing the country into submission by starvation. This point was reinforced under the heading 'Execution of Orders':

Our object is to cut England off from traffic by sea, and not to achieve occasional results at far-distant points. As far as possible, therefore, stations must be taken up near the English coast, where routes converge and where divergence becomes impossible.⁵⁶⁶

By this stage, there can be very little doubt that the intention was to sink as much shipping as possible, all under the direct authorisation of the Kaiser himself. The decision to take up stations close to the British coast, dangerous as this would be to submarines, was chosen in order to maximise their effectiveness. Other parts of this report emphasised the need to minimise the amount of time spent in harbour or conducting practice firings, on the basis that operations at sea, sinking merchant ships, were the best form of practice. Some of the special abilities of the submarine were discussed earlier by Pearce Higgins and

⁵⁶⁵ Naval Intelligence Department, *CB 01360*, report from Leader of Submarines dated 27 January 1917.

⁵⁶⁶ *Ibid.*

others as 'problems'⁵⁶⁷ but in this German report, they were described as 'principal advantages' of ruthless submarine warfare:

- (1) Attack submerged on all ships which are armed or suspect, whenever the boat is in a position for attacking submerged or by means of her speed can reach such a position.
- (2) Utilization of all chances of attack by night.
- (3) Immediately effective firing when a ship is stopped by gunfire, without time being wasted on warning shots.
- (4) No boat communication; consequently, when holding up a ship, the position of the submarine and her distance from the enemy can be chosen solely from the military standpoint.⁵⁶⁸

The employment of these advantages was tantamount to an abandonment of the principles governing the war on commerce described earlier. Attacking submerged, for example, made the question of target identification far more difficult and the practice of not even firing warning shots (blank or live) left the crew of a merchant vessel in a hopeless position. In order to maximise such advantages further, submarines were directed to transit to their patrol areas through the English Channel. Despite all the efforts made by Britain and the allies to make it difficult for submarines, the English Channel route was preferred because it shortened the length of a patrol for the submarines, and so reduced turnaround times between patrols. Details of navigation through the English Channel were also given, including the best times to transit and which lights were likely to be visible.⁵⁶⁹ Such details indicated that German intelligence gathering was very good, the principal source, it must be assumed, being U-boats that had already transited the English Channel. From such observations, the expected counter measures were also listed: nets and mines; submarine traps; and submarine telegraphy.⁵⁷⁰ It is important to consider these countermeasures because they were fundamental to the increase in attacks on shipping from submarines whilst dived and therefore on the greatly reduced likelihood that the crews of the merchant vessels might survive such attacks.

⁵⁶⁷ Pearce Higgins, *ADM 116/1865*.

⁵⁶⁸ Naval Intelligence Department, *CB 01360*, para.C.

⁵⁶⁹ It is also of interest that those submarines forced to take the northerly route around the top of Scotland, were encouraged to make sure that they were seen, in order to deceive the British forces into believing that German submarines regularly used the northerly route, the English Channel having been effectively blocked.

⁵⁷⁰ A note from the translator suggested that this meant hydrophones, or underwater listening devices. The document contains a footnote 'Hydrophones are meant – Tr' – in modern terms, this equates to passive sonar i.e. underwater listening devices.

German Reasons for Use of Dived Attacks

The first of the countermeasures discussed at the submarine Commanding Officers' conference was nets and mines. Germany was aware of the extensive British mining efforts against the ingress and egress points to German ports. To support the U-boats, large naval operations were planned, with the use of airships and aircraft to watch over the Hoofden⁵⁷¹ and escorts for U-boats to act as barrage-breakers and provide force protection. The specific threats from mines and nets in most cases necessitated a submarine to be dived, especially if patrols were present. The German Naval Intelligence Division knew about the poor performance of British mines:

Where danger from mines is suspected, it is advisable to proceed at a depth of 20-30 metres... British mines are frequently near the surface; as a rule they do not detonate, particularly with such short vessels as submarines, as the lever arrangement does not then come into action.⁵⁷²

The threat from mines and nets was limited mainly to German home waters and the choke points in the English Channel. The next threat causing submarines to remain dived was the increased use of submarine telegraphy. In those early days of underwater acoustic technology, Germany was clearly aware of the capabilities of its enemies:

British searching formations make considerable use of submarine telegraphy, by means of which they also keep touch. They are able to hear the sounds of propellers and possibly also auxiliary machinery, periscope motor, trimming pump, ballast pump &c. Where it is suspected that submarine telegraphy is being used, dive to a great depth – also in view of the possibility of towed nets – stop all auxiliary machinery, and proceed with one engine as slowly as possible; if practicable, stop occasionally and make big alterations of course. Keep a watch on the movements of the enemy by means of your own submarine telegraphy installation.⁵⁷³

Staying deep was (and still can be) a good way of avoiding passive sonar from a surface unit and even remaining at periscope depth still maintained an advantage. One of the principal dangers for a submarine on the surface was its vulnerability to gunfire, even in the short time before it might be able to submerge to safety. One of the biggest threats to a U-boat was therefore an armed merchant vessel. The conference report referred to

⁵⁷¹ The Hoofden is the portion of the North Sea between the Straits of Dover and the line Terschelling-Cromer.

⁵⁷² Naval Intelligence Department, *CB 01360*, para.E (a).

⁵⁷³ *Ibid.*

such vessels as 'submarine traps'. In Britain, they were known as the Q-ships. The dangers to submarine Commanding Officers were laid out quite clearly:

These [submarine traps] are vessels with concealed guns. Up to the present the guns have always been mounted on the broadside, mostly about in the middle of the ship's length. These vessels use neutral flags and often neutral markings also – frequently on reversible boards. They often proceed in the near neighbourhood of a neutral ship, in order to approach the submarine whilst the latter is occupied with the neutral. When held up, they stop, blow off steam, in some cases even simulate hits and a fire on board, and abandon the ship in boats, leaving the guns' crews onboard. Frequently the fire is returned with a gun of small calibre in order to make the submarine confident and entice her nearer, when the heavier guns will open up. Every ship must be held suspect.⁵⁷⁴

With such dangers in mind, there was therefore a need for the U-boats to spend the minimum of time in the vicinity of its victim. The quicker a target was sunk, the quicker the submarine could clear the area. The most covert method was of course the surprise attack using a torpedo but if the decision was made to sink a ship by gunfire, submarine Commanding Officers were warned of the dangers from enemy aircraft, submarines, and the best aspect from which to attack enemy ships in order to obstruct the firing arcs of any concealed weapons.⁵⁷⁵ Throughout this conference, the only humanitarian interests covered seemed to concern the safety of the U-boat crews and hardly any mention was made of the effect that these attacks might have on the merchant crews. With this German view of the submarine war, the scene was therefore set for a consideration of the legality of the German submarine campaign, as viewed at the end of the First World War, resulting in the war crimes trials held at Leipzig in 1921.

The 1921 German War Crimes Trials at Leipzig

The U-boats were the subject of much public controversy during the First World War and U-boat atrocities were frequent headlines in British newspapers.⁵⁷⁶ In addition to the books already written on the subject of German war crimes and atrocities at sea during the

⁵⁷⁴ Ibid., para.E (b).

⁵⁷⁵ Ibid.

⁵⁷⁶ 'Fears Of Submarine Murder', *The Times*, 20 Mar 1916, p.6; F P Bennett, 'U-Boat Depredations', *The Times*, 13 Dec 1916, p.11; 'German Savagery At Sea', *The Times*, 1 Jan 1917, p.7; 'Torpedoed Crew Devoured By Sharks', *The Times*, 27 Jul 1917, p.5.

First World War,⁵⁷⁷ several documents have helped to paint a picture of the preparation for the trials at Leipzig, although one of the most authoritative works is acknowledged as being written by Gerd Hankel.⁵⁷⁸ The first document discussed the probability of obtaining sentences of condemnation in the list of British cases passed to the German Government.⁵⁷⁹ The second was a record of the proceedings at the Leipzig trials.⁵⁸⁰ The naval cases⁵⁸¹ under consideration were divided into seven categories: officers holding high command who were responsible for the policy of submarine warfare; naval officers in command of submarines who carried out submarine warfare; bombardment of open towns; laying of mines; the attack on the Scandinavian Convoy; attack from the air; and Captain Fryatt.⁵⁸² Although this thesis is concerned primarily with the naval cases, these cases were by far in the minority. Eighteen per cent of the war crimes cases were in connection with the killing of civilians during the German invasion of Belgium and France, with thirty-seven per cent of all charges relating to the invasion during 1914.⁵⁸³

Naval High Command

In the first category, the report⁵⁸⁴ considered only Admirals von Tirpitz and Capelle, given their position as Secretary of State of the Imperial Navy Office at various times during the war. The following extract made an interesting point on the state of international law at the time:

⁵⁷⁷ Horne and Kramer, *Atrocities*; Tony Bridgland, *Outrage at Sea. Naval Atrocities of the First World War*. (Barnsley: Leo Cooper, 2002).

⁵⁷⁸ Alan Kramer noted that Gerd Hankel has produced the first full study of the Leipzig war crimes trials. Although written in German, the footnotes provide plenty of direction for further research. See Alan Kramer, The First Wave of International War Crimes Trials: Istanbul and Leipzig, *European Review*, 14, no.4, (2006), pp.441-455 and Gerd Hankel, *Die Leipziger Prozesse. Deutsche Kriegsverbrechen und ihre strafrechtliche Verfolgung nach dem Ersten Weltkrieg* (Hamburg: Hamburger Edition, 2003).

⁵⁷⁹ Law Officers' Department, *TS 26/15 German War Trials* (Law Officers, nd but probably 1921).

⁵⁸⁰ Law Officers' Department, *ADM 1/8611/158 Cmd 1450 German War Trials - Report of Proceedings before the Supreme Court in Leipzig* (1921).

⁵⁸¹ The majority of the cases tried at Leipzig concerned accusations of brutality against prisoners-of-war and are covered in greater detail by Horne and Kramer, *Atrocities*. See also Bridgland, *Outrage*.

⁵⁸² Bridgland, *Outrage*, ch.7.

⁵⁸³ Kramer, Istanbul and Leipzig, p.447.

⁵⁸⁴ Law Officers' Department, *TS 26/15*.

If any of the High Naval Command are to be placed on trial, the best chance of proving the necessary facts seem to be in connection with the attacks on Hospital ships rather than in connection with the general policy of unrestricted submarine warfare which might involve somewhat difficult questions of international Law in respect of defensively armed ships and ships sailing under armed convoy. Even so, it seems probable that the Court would avoid convicting by finding a justification in a bona fide belief that there was an abuse of Hospital ships by the British Government.⁵⁸⁵

From the outset, there appeared to be an admission that the policies of arming merchant ships and forming protective convoys had placed the British Government in a rather tenuous legal position. The greatest chance of avoiding conviction was suggested to be in proving that Britain abused the use of hospital ships under international law e.g. by using them to transport troops. Any charges against Tirpitz and Capelle relating to their role in unrestricted submarine warfare could be opposed and had the potential for becoming muddled by the introduction of considerations regarding Britain's countermeasures such as the arming of merchant ships. In order to avoid this position being called into question, it was decided to focus on more clear-cut and tangible aspects of the law. The Law Officer's report failed however to give any clear recommendation or draw any solid conclusion regarding the proposed way ahead. Instead, it simply stated that there would be a reasonable probability of securing some sort of conviction based on the high office held by these officers during the submarine campaign.

Regarding the Kaiser, Article 227 of the Treaty of Versailles called for his prosecution⁵⁸⁶ but following his flight to Holland at the end of the war, he was granted asylum by Holland; requests for his extradition were refused by the Dutch Government.⁵⁸⁷ As it turned out, no charges were brought against the naval leadership at the Leipzig trials and paradoxically, the hospital ship cases were used as the basis for the charges against the German U-boat Commanding Officers.

⁵⁸⁵ Ibid., p.2.

⁵⁸⁶ Simeon E. Baldwin, 'The Proposed Trial of the Former Kaiser', *Yale Law Journal*, 29, no.1 (Nov. 1919), pp.75-82.

⁵⁸⁷ Afflerbach, *Supreme Warlord*, p.213.

Officers in Command of Submarines

The section regarding officers in command of submarines was somewhat clearer. The Supreme Court at Leipzig had previously, in the case of the hospital ship *Dover Castle* (covered later), stated that:

Where an Officer has acted within the terms of an order given to him he is not criminally responsible for his act unless it can be shown that he exceeded the order, or that he knew the order to be contrary to the law. In that case they [the Supreme Court] held that the torpedoing of a hospital ship did not fall within the exceptions and the officer was acquitted.⁵⁸⁸

The important point to consider was that only if an officer exceeded his orders or believed his orders to be contrary to the law, would he be liable to criminal prosecution. The three examples given of likely causes for prosecution were: boats which had been fired on after a ship has been sunk; hospital ships which had been sunk outside the barred zone; and passenger liners or other vessels which had been torpedoed, in contravention of agreements between the German and US Governments, that Germany conduct its submarine campaign in accordance with the laws of cruiser warfare.

Before considering the details of the individuals under consideration for arraignment on criminal charges, it is worth investigating some of the background to the third point above. The legality of sinking liners and other merchant vessels was a matter of bitter contention particularly between Germany and the US for much of the war. The controversy was fuelled by a number of high profile cases such as the sinking of the *Lusitania* in April 1915. This resulted in extensive and protracted correspondence between the German and US Governments.⁵⁸⁹ During the course of this correspondence, the liner *Arabic* was sunk on 19 August 1915. On 1 September 1915, Germany made a pledge to the US that 'Liners will not be sunk by our Submarines without warning and without safety of the lives of non-combatants [sic], provided that the liners do not try to escape or offer

⁵⁸⁸ Law Officers' Department, *TS 26/15*, p.3.

⁵⁸⁹ Woodrow Wilson, 'The First Lusitania Note to Germany', *Essential Documents in American History*, Essential Documents 1492-Present 13 May 1915); Woodrow Wilson, 'Lusitania Notes', *Essential Documents in American History*, Essential Documents 1492-Present 1915).

resistance.⁵⁹⁰ This pledge was known as the Mediterranean War Pledge⁵⁹¹ but it was not adhered to. After numerous breaches of this pledge, culminating in the sinking of the *Sussex* on 24 March 1916, the German Government on 4 May 1916 made the following declaration, known as the Sussex Pledge:

The German Naval Forces have received the following orders; "in accordance with the general principles of visit and search of merchant vessels recognised by International law such vessels, both within and without the area declared as naval war zone shall not be sunk without warning and without saving human lives unless those ships attempt to escape or to offer resistance."⁵⁹²

This undertaking remained in force until February 1917 when Germany introduced unrestricted submarine warfare. Even with this in force however, it was still incumbent on the submarine's Commanding Officer to decide and indeed define whether the vessel was attempting to escape or offer resistance.

The Law Officer's report continued by discussing the individual cases of the Commanding Officers of various submarines against whom a case could be made.⁵⁹³ In many cases, such as that of Max Valentiner,⁵⁹⁴ one of the most famous U-boat Commanding Officers of the war, evidence of atrocities was deemed insufficient.⁵⁹⁵ Many others such as Otto Weddigen⁵⁹⁶ and Walter Schwieger⁵⁹⁷ were killed in action and could not be brought to justice. Much of the information contained in the report considered whether convictions at Leipzig might indeed have been possible or likely based on the evidence available.

⁵⁹⁰ Law Officers' Department, *TS 26/15*, p.4.

⁵⁹¹ So named because it was later extended to include merchant ships in the Mediterranean.

⁵⁹² Law Officers' Department, *TS 26/15*, p.5.

⁵⁹³ A young lieutenant named Karl Dönitz, whose submarine, *UB 68*, had been sunk in the Mediterranean on 2 October 1918 spent his months in a prison camp considering what the U-boats had done right, what they had done wrong, and would apply those lessons some twenty years later.

⁵⁹⁴ Christian August Max Ahlmann Valentiner (15 December 1883 – 19 July 1949). Valentiner was a pre-war instructor at the U-boat school in Kiel and went on to become the third most successful U-boat Commanding Officer in terms of tonnage sunk. The most successful submarine ace was (and remains) Lothar von Arnauld de la Perière (18 March 1886 – 24 February 1941) with 194 ships to his credit.

⁵⁹⁵ Law Officers' Department, *TS 26/15*, p.10.

⁵⁹⁶ Otto Weddigen (15 September 1882 – 18 March 1915). Weddigen sank the cruisers *Cressy*, *Aboukir* and *Hogue* at the beginning of the war and was killed when his submarine *U-29* was rammed and sunk by HMS *Dreadnought*.

⁵⁹⁷ Walther Schwieger (7 April 1885 – 17 September 1917). Schwieger was responsible for sinking the *Lusitania* and was killed when his submarine *U-20* hit a British mine and sank off Terschilling.

Cases Brought Before the Supreme Court at Leipzig

The report of proceedings of the Supreme Court at Leipzig⁵⁹⁸ gave the details of the seven cases brought to the Court by the Allied Governments. Of these seven, only three were submarine Commanding Officers. In accordance with Article 228 of the Treaty of Peace with Germany, the Allied Governments produced a list with a large number of names; many of these were the principal military and naval leaders in Germany. Article 228 read as follows:

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the German Authorities.⁵⁹⁹

The report stated that the German Government had voiced concerns over the political ramifications of Germany's principal wartime military and naval leaders being tried by the Allied Powers. Instead, the Germans proposed a compromise that the accused be tried before the Supreme Court of the Empire in Leipzig. In defence of the German position, Horne and Kramer noted:

This is not to say that the proceedings which opened on 23 May 1921 before the Criminal Senate of the Reichsgericht in Leipzig were a charade. The German judicial system enjoyed real independence from government, as centre-left politicians in the Weimar learned. The court president, Dr Karl Schmidt, conducted the trials with punctilious fairness and courtesy towards both Allied witnesses and top-level delegations from Britain, France, and Belgium which attended the prosecution of 'their' cases.⁶⁰⁰

The Allies accepted this as being in keeping with the spirit in which Article 228 had been produced. They resolved to leave the trials to Germany, but retained the right to try any of the accused if they felt that the German Court did not award a just punishment to the guilty.

⁵⁹⁸ Law Officers' Department, *ADM 1/8611/158*.

⁵⁹⁹ *Ibid.*, p.3.

⁶⁰⁰ Horne and Kramer, *Atrocities*, p.346.

From this list of names therefore, the three submarine related cases were Commander Helmut Patzig, Lieutenant Commander Karl Neumann, and Lieutenant Commander Wilhelm Werner. Of these three, only Lieutenant Commander Neumann could be called for trial. Commander Patzig was noted as having an address in Danzig but his whereabouts were not known; Lieutenant Commander Werner could not be traced at all. Warrants for the arrests of both officers were issued but not executed, although their property had been sequestered. Even though the Allies had issued the list of defendants for the trials, the German Government added two of their own names to the list for the war crimes trials. Lieutenants Dithmar and Boldt were also brought in front of the Court; they were serving in *U-86* under Commander Patzig when the hospital ship *Llandoverly Castle* was sunk.

Hospital Ship *Llandoverly Castle*

The case of the *Llandoverly Castle* involved witnesses being recalled great distances. Four of the most important ones were at sea or were resident abroad. Two of these were intercepted in New York, one was on passage from the West Indies to England, and the other was in Vancouver. All of this was achieved in less than three weeks, which was an impressive feat for the time, although the Leipzig hearing was specially adjourned on its final day to accommodate the arrival of the witness from Vancouver. In all, twelve witnesses gave evidence in Leipzig, whilst another made a statement at Bow Street in London. From the evidence before them, the Court ascertained the following information:

The *Llandoverly Castle* was a British hospital ship, that she was properly equipped and lighted, and was used solely for the purposes of a hospital ship and carried no combatants or munitions of war⁶⁰¹; that she was on her proper course; that she was followed by the submarine *U-86* for several hours and when her lights were lit she was recognised as a hospital ship beyond any possibility of doubt; and that after fully considering the matter and discussing it with the members of his staff, Commander Helmut Patzig torpedoed the vessel without warning⁶⁰². The Court further held that at least three

⁶⁰¹ According to the statements of two witnesses, the steamer *Llandoverly Castle* had been used as a troop transport until 1916. In 1916, she was then commissioned to carry wounded and sick soldiers home to Canada from the European theatre of war and was suitably fitted out in accordance with the Tenth Hague Convention of 18 October 1907.

⁶⁰² The *Llandoverly Castle* was sunk at approximately 2130 on 27 June 1918 in the Atlantic Ocean, about 116 miles south-west of Fastnet in Ireland.

boats got safely away from the ship with survivors in them; and that the boats were found and searched by the submarine, whose Commander professed to hold the belief and was attempting to prove that the vessel carried eight American Flight Officers; that failing to find in the boats any justification for torpedoing the ship, Commander Patzig with the approval of Lieutenants Dithmar and Boldt (who with the Gunner Meissner – now dead – were alone on the deck of the submarine with the Commander at the time), deliberately fired on the surviving boats and hit and destroyed two out of the three of them with the consequent loss of life of all the persons who were in them. Commander Patzig required and obtained from the officers, crew and prisoners in the submarine, a pledge to maintain silence as to the incident until the conclusion of the war, and he further concealed all traces of his act by omitting any reference to the incident from the Log Book and forwarding a falsified chart of the courses of the submarine to the German Admiralty.⁶⁰³

This incident can be considered in two parts; the first was the deliberate torpedoing of a hospital ship without warning, the second was the attack on the ship's boats. The Court found that the torpedoing was the responsibility of Commander Patzig, as the Commanding Officer of the submarine. The German naval command had given orders that hospital ships were only to be sunk within the limits of a certain barred area. This was, however, a long way from the area in which the *Llandoverly Castle* was sunk. Patzig was aware of this and knew that by torpedoing the *Llandoverly Castle* he was acting against orders.⁶⁰⁴ The more complicated question that arose was therefore 'Why did Patzig try to sink the lifeboats?' The answer was suggested in an editorial comment in the *American Journal of International Law*.⁶⁰⁵

The irregular sinking of merchant ships by U-boats had already caused the German Government to enter into terse correspondence with several nations. Any further sinkings of merchant vessels therefore had the potential to weaken Germany's international position and to sway already wavering neutral countries against Germany. As a U-boat Commanding Officer, Patzig would have been aware of the political situation and may have intended to remove evidence of his actions. His false entries in the submarine's log and chart would have been a short-term measure since any survivors of the attack could very easily have described what took place when they were rescued and repatriated. The

⁶⁰³ Law Officers' Department, *ADM 1/8611/158*, pp.14-15.

⁶⁰⁴ Judicial Decisions, 'German War Trials: Judgment in Case of Lieutenants Dithmar and Boldt', *American Journal of International Law*, vol.16, no.4 (Oct. 1922), p.710.

⁶⁰⁵ *Ibid.*

only logical option open to Patzig would therefore have been to remove the remaining and damning evidence i.e. the survivors.

For their part in the sinking of the ship's boats, Dithmar and Boldt could not claim that they were acting under superior orders and indeed could have refused to pledge their silence or even disclosed their actions on return to port. In his address to the Court, the Oberreichsanwalt⁶⁰⁶ stated that there was no direct legal proof to show that the shells fired by the submarine actually sank the boats and requested that the two Lieutenants be found guilty of attempted murder and awarded four years' imprisonment. The Court however believed that the evidence that the shells had sunk the boats was 'irresistible' and they accepted that the two boats had been sunk by shellfire as a fact. The Court also believed that the officers had acted without adequate premeditation and felt that they were guilty of the intermediate degree of killing⁶⁰⁷ and were therefore awarded the four years' imprisonment as requested by the Oberreichsanwalt. On top of this, Lieutenant Dithmar was dismissed from the Service and Lieutenant Boldt, a retired officer, was deprived of the right to wear his uniform.⁶⁰⁸ Throughout the trial, both officers refused to make any statement, excusing themselves from doing so by stating that they had given their word to Commander Patzig not to disclose any information regarding these events. Any statements they made would have incriminated themselves further. Commander Patzig himself could not be tried, as he could not be located; his lack of appearance at the trial of his fellow and subordinate officers was severely criticised by the Court. The only officer on the Allies' original list was therefore Lieutenant Commander Karl Neumann.

⁶⁰⁶ Supreme Reich Prosecutor/Public Prosecutor.

⁶⁰⁷ Under the German legal system, a degree of killing was recognised which came between murder with deliberate intent and manslaughter by negligence without intent.

⁶⁰⁸ Horne and Kramer note that these verdicts were reversed in 1925. Horne and Kramer, *Atrocities*, p.355.

Hospital Ship *Dover Castle*

The *Dover Castle* was sunk in the Tyrrhenian Sea⁶⁰⁹ and although this thesis has been deliberately limited to the waters around Britain and in the North Sea,⁶¹⁰ the *Dover Castle* was the only case of a submarine Commanding Officer being tried at Leipzig and is therefore worthy of inclusion. The case itself is interesting because despite the overwhelming evidence against Lieutenant Commander Neumann, he was acquitted.

On 26 May 1917, Neumann sighted a convoy, clearly marked as hospital ships, with an attendant destroyer as escort and made his approach on them, firing a torpedo at the nearest steamer, the *Dover Castle*. The explosion killed six crew members; the remaining sick and wounded were evacuated by the destroyer. One and a half hours after his initial attack, Neumann sank the abandoned *Dover Castle* with a second torpedo. Neumann had earlier sunk the *Elm Moor* and taken prisoner on board his submarine *U-67* Captain Williamson, the ship's Master. Williamson was called as a witness at Neumann's trial and was able to verify⁶¹¹ that he had been onboard when *U-67* sank the *Dover Castle*. Neumann also freely admitted that he had sunk the *Dover Castle*. Despite this damning eyewitness evidence and confession, Neumann relied on the defence that he had been acting under superior orders. After consultation with the Admiralty, it was decided to proceed with the case because of the potential importance of its result; the only result of a successful defence would be acquittal. Neumann's defence relied solely on the plea that in torpedoing the *Dover Castle*, he was acting under a direct order from his superiors.

The German Government had come to believe, over the course of the war, that enemy Governments were using their hospital ships not only to carry the sick and wounded, but also for military purposes such as transportation of healthy troops and were therefore acting in contravention of the 10th Hague Declaration. Germany therefore issued

⁶⁰⁹ The area bounded by Italy, Corsica, Sardinia and Sicily.

⁶¹⁰ The naval war in other theatres of operation is covered in detail in Halpern, *Naval History*, particularly chapters 6, 7, 8 and 12.

⁶¹¹ On arrival back at his base, Neumann provided Williamson with a signed certificate stating that Williamson was the Master of the *Elm Moor*, which had been torpedoed by *U-67*. A copy of this certificate was presented as evidence to the Court.

orders on 29 January and 29 March 1917 to the effect that with the exception of hospital ships notified to Germany six weeks in advance of their journey, all other hospital ships in the Mediterranean were liable to attack.⁶¹² No such exceptions had been notified to Germany and Neumann was aware of this situation. Under Article 47 of the German Military Penal Code, Neumann was bound to obey these orders issued by the German Admiralty and it was noted in Court that 'when the expectation of a service order involves an offence against the criminal law, the superior giving the order is alone responsible.'⁶¹³ Neumann apparently had no reason to question his orders and he believed them to have been produced by the Admiralty in accordance with international law.

The Oberreichsanwalt did not ask for a conviction and it was decided that Neumann bore no criminal responsibility for the act, as this did not exceed the orders that he had been given. To clarify the point on exceeding orders, the Court laid down that a subordinate could only be punished if he exceeded the order given to him or was aware that his superior's orders directed action that involved a civil or military crime. Believing that neither of these factors was present in Neumann's case, he was acquitted.⁶¹⁴ So what of the actual orders themselves? The issue in the Court was obedience of superior orders and not whether the orders were legal, only that Neumann believed them to be legal. It was in fact stated quite plainly by the Oberreichsanwalt that the issue of whether the orders were in fact just and lawful was immaterial to the case. This was the *ratio decidendi*⁶¹⁵ of the Court and from a modern viewpoint, the decision can only be considered correct given the circumstances at the time. The British press was not content with the outcome, with words such as 'farce' and 'humiliation' being used in *The Times* to describe the proceedings not just at the naval trials,⁶¹⁶ but also those relating to brutality in prisoner-of-

⁶¹² Judicial Decisions, 'German War Trials: Judgment in Case of Commander Karl Neumann', *American Journal of International Law*, vol.16, no.4 (Oct. 1922), p.706.

⁶¹³ Ibid., p.707.

⁶¹⁴ See also Horne and Kramer, *Atrocities*, p.347.

⁶¹⁵ *Ratio decidendi* (L) the reason or principle on which a legal decision is based.

⁶¹⁶ 'End of Leipzig Farce/Neumann a Hero/Hospital Ship Sunk Under Orders', *The Times*, 6 June 1921, p.10.

war camps.⁶¹⁷ With the benefit of hindsight, however, the entire system of international law and the morality of the judgement can easily be questioned.⁶¹⁸ John Horne described the trials as 'what, in Allied eyes, was the fiasco of the Leipzig war crimes trials in 1921.'⁶¹⁹ Despite the best intentions of the Allied governments, there was disunity and Germany made every effort to exploit this. Whilst France and Belgium pushed for high numbers of cases to be brought before the court at Leipzig, Lloyd George was in favour of exemplary punishment saying, 'If even 20 were shot it would be an example.'⁶²⁰ Despite this seemingly harsh approach, Lloyd George was more conciliatory towards Germany than other Allied nations and the move to allow Germany to conduct its own trials was part of his shift in strategy towards Germany. However, Kramer notes that Germany had its own reasons for accepting Lloyd George's approach:

German eagerness to prosecute in the British cases stemmed from the correct prediction that the British would be easiest to satisfy, and that once satisfied, the impetus for the trials would abate. The Leipzig court could afford to pass judgments that more or less satisfied the British because these cases did not affect the principles of German land warfare. There was also the (not unjustified) assumption that the Allies could be divided, since the British were evidently more inclined to appease Germany than the French and Belgians.⁶²¹

⁶¹⁷ 'German Views of Leipzig Trial', *The Times*, 28 May 1921, p.9.

⁶¹⁸ George A. Finch, 'Superior Orders and War Crimes', *American Journal of International Law*, vol.15, no.3 (Jul. 1921), pp.440-445.

⁶¹⁹ John Horne, 'Focus: Crimes against Humanitarian Law: International Trials in Perspective. Introduction,' *European Review*, 14, no.4 (2006), p.416.

⁶²⁰ Cited in Kramer, *Istanbul and Leipzig*, p.446.

⁶²¹ *Ibid*, p.448.

8. Woodrow Wilson and the state of international law at the end of the First World War

The blockade of foreign shores and the interdiction of trade has long been part of the role of the Royal Navy (and other navies). It was only in the course of the First World War however that the traditions of blockade and capture at sea clashed with the rights of those onboard the vessels, especially the right to life as discussed in the previous chapter.

The First World War was a time of conflict in many senses. Not only were nations and economies thrown into turmoil, but also the very international system that underpinned their behaviour. International law lay at the heart of this system⁶²² and throughout the war, there existed no formal agreement between all belligerents, regarding the state of international law at sea. The origins of international law, or the law of nations, were discussed in chapter one, but many of the developments in international law which came about after the First World War, actually concerned the issue of 'Freedom of the Seas'. This concept, heralded by Grotius⁶²³ in the spring of 1609, was central to one of Woodrow Wilson's fourteen points for peace.⁶²⁴ Many eminent legal minds at the time considered the outstanding statements of international law, such as the Declarations of London and Paris and the various Hague Conventions. The history of these deliberations aids an understanding of how international law was viewed towards the end of the First World War. In this light, the post-war views on the use of submarines and to a lesser extent, mines have also been considered.

Woodrow Wilson

In his address to a Joint Session on 8 January 1918, US President Woodrow Wilson outlined his fourteen points for peace. The speech appeared idealistic but was blended

⁶²² Neff, *War and Law*; na, 'Notes on International Law', *Journal of Comparative Legislation and International Law*, vol.3, no.1 (1921), pp.141-160; Bobbitt, *Shield of Achilles*, ch.4.

⁶²³ *Free Sea*, ed. by Armitage.

⁶²⁴ The Avalon Project at Yale Law School, *President Woodrow Wilson's Fourteen Points*, accessed 5 March 2007. Available: <http://www.yale.edu/lawweb/avalon/wilson14.htm>.

with political calculation, and was Wilson's view on how to restore peace to the world. Of the fourteen points which he outlined, the second and third are most relevant to this discussion:

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secure once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.⁶²⁵

The second point encompassed the majority of the issues with which international law was concerned at the time and epitomised the legal 'ideal' for maritime law. Agreements were generally notional by nature. No truly international body existed to regulate or arbitrate the plethora of legal issues that existed across the world. Wilson was of course leading up to the proposition for a League of Nations, the governing body that was lacking in the realms of international law.

Wilson's ideas were not, however, hastily formed; they had been formulated many years before with the assistance of his friend 'Colonel' House. Even before the war began, House and Wilson had tried to ensure lasting peace between the US and the various European states. For example, when rifts began to develop between Britain and the US over the Panama Canal and Mexico, House was authorised by Wilson to mediate.⁶²⁶ It was during these mediations that House became friends with Sir Edward Grey, the British Foreign Secretary. This relationship with Grey was to prove invaluable to both the US and

⁶²⁵ Ibid.

⁶²⁶ Bobbitt, *Shield of Achilles*, p.380.

Britain during the coming war.⁶²⁷ As early as January 1915, House was in Britain (having sailed across the Atlantic in the ill-fated *Lusitania*) to act as Wilson's mediator for a peaceful resolution to the war. In doing so, he discussed with Grey the possibility of a League of Peace or League of Nations, in which the US would play a key role as a guarantor of security. In order to do this effectively, the US would need to have taken part in the war and emerged as one of the victors, an idea which echoed Kitchener's original war aim for Britain. In this way, the US would be able to take major steps towards reducing the prospects for war in the future. Wilson however was still unwilling to commit the US to join the war. Bobbitt noted that in mid-1916, the strategic aims of Britain and the US remained fundamentally different.⁶²⁸ For the US, their participation in the war would be to fight for the future of democracy; for Britain, the war was supposed to stop a single Continental power from dominating Europe.

The very concept of international law was dependent on the view of sovereign states. In the 'realist' view put forward by the German legal theorist Carl Schmitt,⁶²⁹ the system of sovereign states was a Darwinian environment in which no international agreement could derogate its own sovereignty. Wilson however, held the view that popular sovereignty could be expanded globally on the US model. This 'democratic' view of international law is more like the fundamental constitutional law that the US Supreme Court considers when judging the constitutionality of domestic law. Even with the existence of supra-national bodies today, the realist view still prevails.

Wilson was prepared to support his plans for mediation by a resort to arms if necessary⁶³⁰ and Bell recalled a truth of political history 'that a mediating power is drawn

⁶²⁷ Key works on Wilson's role as a mediator in international affairs include: Inga Floto, *Colonel House in Paris. A Study of American Policy at the Paris Peace Conference 1919*. (Copenhagen: Universitetsforlaget I Aarhus, 1973); A. Lentin, *Lloyd George, Woodrow Wilson and the Guilt of Germany. An Essay in the Pre-History of Appeasement*. (Baton Rouge: Louisiana State University Press, 1984); and M. Hankey, *The Supreme Control at the Paris Peace Conference 1919. A Commentary*. (London: George Allen and Unwin Ltd, 1963).

⁶²⁸ Bobbitt, *Shield of Achilles*, p.391.

⁶²⁹ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. by George Schwab (Chicago: University of Chicago Press, 2005).

⁶³⁰ Seymour, *Colonel House*, chs.4, 5 and 7 as cited in Bell, *Blockade*, p.49.

into belligerency, if its mediation is unsuccessful.’⁶³¹ With this in mind, the British Government realised the significance of Wilson’s role as a mediator and ‘the importance of avoiding friction with his Government followed naturally.’⁶³²

Freedom of the Seas

Wilson’s use of the phrase ‘freedom of navigation upon the seas’ did not find favour with Allied Governments however. A keen student of the study of war, the retired Admiral Sir Reginald Custance explained Wilson’s phrase as follows:

Absolute freedom of navigation upon the seas... in war, seems to mean peace at sea and war on land, as otherwise there will be no war at all. War at sea will only begin when international action is taken. Thus, war at sea is to be limited by international action, but war on land is to remain unlimited. This result tends to undermine the principle that operations by land and sea are interdependent... President Wilson accepts the long-established practice that the seas may be closed in whole or part, but by international, instead of national, action, and only to enforce international covenants. Everything will depend upon whether international action in a righteous cause can be made as rapid and efficient as that of a belligerent nation or group of nations fettered by friction with neutrals – an important point, seeing that upon it may depend the security of Great Britain and other countries.⁶³³

The phrase ‘Freedom of the Seas’ had meant several different things in the past. At one time, it represented freedom of navigation of the seas during times of peace in opposition to jurisdictional claims by countries such as Spain, Portugal and Britain. At another time, it was used as a pretext for the movement demanding the repeal of excessive tolls levied by Denmark on the Baltic Sound. Most commonly, however, the phrase referred to navigation in time of war and its advocates wished to curtail the freedom of action of naval powers; this could be done by limiting the rights of belligerents to capture property at sea or by increasing the rights of neutral states. At the end of the war, Lloyd George did not feel that guaranteeing the freedom of the seas could be accepted as a condition of the Armistice. He argued that ‘the power of blockade goes; Germany has been broken almost as much by the blockade as by military methods.’⁶³⁴ Vincent notes the two unfortunate consequences of this remark by Lloyd George. First, Wilson’s acceptance

⁶³¹ Bell, *Blockade*, p.48.

⁶³² Ibid.

⁶³³ Reginald Custance, ‘The Freedom of the Seas’, *Transactions of the Grotius Society*, 5, Problems of Peace and War, Papers Read before the Society in the Year 1919 (1919), pp.65-70.

⁶³⁴ Cited in Vincent, *The Politics of Hunger*, p.50.

of this argument was a precedent for further compromise and second, it added weight to the argument that the blockade against Germany should be continued even following the German surrender.⁶³⁵ The continuance of the blockade had severe consequences on the German people, as Vincent concludes:

The blockade was maintained following German surrender, and its continued application unwittingly claimed a high toll in innocent life. This tragic episode might have been averted, without compromising the Allied position, had clearer minds than those of Marshal Foch and Admiral Browning been awarded control of the armistice apparatus. Greater benevolence certainly was not beyond the realm of possibility, regardless of what had gone before... the Allies were misguided in maintaining a rigid blockade.⁶³⁶

International Law Committee

Britain's interests in the Freedom of the Seas debate were investigated by the International Law Committee, which met for the first time on 25 January 1918. The Home Secretary, the Rt Hon Viscount Cave,⁶³⁷ chaired the Committee. The Committee also included members from the Admiralty, War Office, Foreign Office, Air Ministry and the Procurator-General's Department, including the ubiquitous Pearce Higgins. Its terms of reference, originally provided by the Foreign Office were:

To consider what additions and amendments would be desirable in the interests of Great Britain to the established rules of international Law on the subject of the conduct of hostilities, whether those rules rest on treaty or custom.⁶³⁸

These were considered carefully during the first meeting of the Committee. It was recorded that the terms of reference 'would no doubt be published eventually with the Committee's report and the weight attached by the outside world to the latter document might be affected to the same extent by the manner in which the terms of reference were drafted.'⁶³⁹ The Committee also considered that the intentions of other states should be investigated as part of its work. This outward-looking approach indicated that Britain was already turning its thoughts to events after the war, and given the requirement to investigate international law, it is reasonable to infer that Britain expected to be on the side

⁶³⁵ Ibid.

⁶³⁶ Ibid, p.160.

⁶³⁷ Cave, George. (1856–1928). Lawyer and politician. He notably served briefly as both a law lord and Home Secretary for a three-month period during 1918-19.

⁶³⁸ W. Stewart, *ADM 116/1865 Minutes of the First Meeting of the International Law Committee 25 January 1918* (1918).

⁶³⁹ Ibid.

of the victors. There was no indication at this early stage, of any 'victor's justice' being developed for use against Germany but the formation of the Committee seemed to acknowledge the need to clarify a number of issues outstanding under international law. The issue of other states' intentions was passed to the Foreign Office, whilst it was agreed that the Foreign Office, War Office, and Admiralty should draw up a list of important subjects for consideration. There was however, unanimous agreement that the first and most important matter was the revision or denunciation of the Declaration of Paris.

By the time of the Committee's second meeting in May 1918, lists of items for discussion had been received from the Foreign Office, War Office and Procurator-General, but most notable was the absence of any lists from the Admiralty, for which no explanation was given at the time. Interestingly, the list drawn up by the Committee, even without input from the Admiralty, was predominantly naval, with the first three items (of twenty-six) referring to submarine warfare, mines, and barred zones.⁶⁴⁰ The Admiralty did however produce an extensive memorandum on the Declaration of Paris and it clearly saw the Declaration's status as one of the most important issues of international law for clarification. The Declaration of Paris went on to be the focus of the Committee's work for some time and it is worth reproducing some of the Admiralty's comments on this subject, as they show an unequivocal and forthright tone not often used by the Admiralty regarding matters of international law:

Regarded from a Naval point of view the provisions of Article 2 of the Declaration of Paris [the principle of free ships, free goods] are clearly not in the interest of Great Britain, for they fetter the exercise of that sea power upon which the Country depends.

In their Lordships' views our aim should be to rid ourselves of all that has been shewn [sic] by the experience of this war to be detrimental to the exercise of our full sea power, rather than to attempt to fetter by rules of International Law, the sea warfare of the future, the conditions of which, with the progress of science, no man living can foresee. Their Lordships are therefore strongly of opinion that whatever steps are considered necessary to effect our withdrawal from adherence to the Declaration of Paris should be taken as early as possible.

After their habitual disregard of the rules of International Law, the Central Powers could hardly be heard to object.⁶⁴¹

⁶⁴⁰ W. Stewart, *ADM 116/1865 Minutes of the Second Meeting of the International Law Committee 3 May 1918*. (1918).

⁶⁴¹ O. Murray, *ADM 116/1865 Admiralty Memorandum Circulated to the International Law Committee (76209/350.T) dated 30 April 1918*. (1918).

The Admiralty did eventually respond to the International Law Committee with its list of items for discussion, on 10 September 1918. It commented on the list produced back in May, and the tone of the response indicated that the Admiralty was quite sure of a British victory as there was a greater sense of 'victor's justice' in its language. In particular:

In anticipation of the question of the 'Freedom of the Seas' being brought up by Germany at the Peace Conference it is considered that steps should be taken to discover what signification [sic] is given to this expression by different Powers in order that this country may be in a position to deal with any claims that may be put forward under this heading.⁶⁴²

The International Law Committee produced a paper for the Attorney-General, which sought to examine the historical and legal aspects of the Freedom of the Seas.⁶⁴³ In one of the early paragraphs, the Committee discounted the need to discuss the Freedom of the Seas during times of peace, which seemed a reasonable limitation to impose, but it also noted that many issues of international maritime law remained outstanding, including the definitions of territorial waters, gulfs, bays and so on. Of greater interest was the distinction made between belligerents and neutrals. The report stated that the attitude of most states to neutral rights had been inconsistent. Britain and the US, for example, when acting as belligerents, had viewed the laws of naval warfare differently to when they were neutral. Few powers were noted as having consistently championed the rights of neutrals. In what can be viewed as a pointed comment against the Central Powers, the report stated:

Powers with large armies have endeavoured to limit the effect and force of sea power, of which with good cause they stood in awe; while naval powers have, in the main, asserted the right to the same freedom in the use of their fleets for offensive purposes as the land Powers claimed for their armies.⁶⁴⁴

This was clearly biased against Germany, judging by the reference to 'powers with large armies', but in Germany's defence, it could also have been taken as a demonstration that a state ought rightly to make the most of whatever strengths and skills it possessed. Contrary to Woodrow Wilson's belief that the high seas should be safe for navigation during peace and wartime, unrestricted navigation was certainly not the norm for enemy or

⁶⁴² Charles Walker, *ADM 116/1865 Admiralty Memorandum to the International Law Committee regarding Subjects to be Discussed by the Committee dated 10 September 1918*. (1918).

⁶⁴³ International Law Committee, *FO 800/920/11472*.

⁶⁴⁴ *Ibid.*, p.2.

neutral merchant shipping and never had been during the entire history of war at sea. Enemy ships remained open to capture by belligerents, and neutral ships were subject to restrictions placed upon them by belligerents in time of war. The International Law Committee's report looked further at the restrictions placed on neutral ships and once again demonstrated a clear bias in the manner in which it described mines and submarines. Mines were described as being used by belligerents to control or exclude areas of the high seas and particular note was made of the term 'war zones' in order to give them a formal and morally defensible basis; the mine was Britain's primary tool of blockade enforcement. The language employed to describe Germany's use of submarines included words such as 'suffering', 'violation' and 'great losses'. The report acknowledged that the retaliatory methods employed by Britain caused damage to neutral shipping through delay and loss of time, but 'such methods have, however, in no case involved loss of life, or destruction of neutral ships.'⁶⁴⁵

Returning to Wilson, his two main objectives when trying to achieve free seas were re-iterated in the International Law Committee's report as being firstly, to limit the actions a belligerent could take against enemy commerce and secondly, to limit the actions against neutral commerce. Both of these affected a belligerent's ability to influence the enemy, with the former being by direct means and the latter indirect.

Freedom of the Seas was certainly not a new subject and it was debated first in the approach to the Second Hague Peace Conference in 1907 and then in the Declaration of London in 1909, when it emerged that the maintenance of belligerent rights was preferred by Britain.⁶⁴⁶ Over the years leading up to the First World War, these rights were slowly degraded, partly through the wish to maintain good relations with other nations. Furthermore, the potential advantages of these rights in a naval war of the type that developed during the First World War had not been considered fully. In a common theme

⁶⁴⁵ Ibid., p.3.

⁶⁴⁶ Ibid., p.5.

throughout the various debates on international law, the Admiralty's failure to offer guidance or opinion compounded this oversight. As the International Law Committee observed 'how far this has been due to incomplete study of the situation by naval experts, or the absence of guidance by the Admiralty we are unable to say'.⁶⁴⁷ The Committee's report then considered some of the more recent events in international law:

The lessons of the present war clearly point to the great danger that may ensue to this country, if a one-sided or incomplete view of the possibilities of naval power is taken. Naval warfare is not a series of contests between the armed forces of the opposing States; the struggle consists of a series of operations for the control of the communications of the commerce which is aiding one or other of the combatants in his conduct of the war. The capture of enemy commerce, and the stoppage of his seaborne supplies, saps the national prosperity on which war depends for its energy, and is as truly a military measure as the killing of men or the sinking of ships in battle.⁶⁴⁸

This view was clearly one that had emerged out of the attritional struggle of the First World War because it pushed aside the old doctrine of the Clausewitzian decisive battle (although it did embrace the principle of total war). With the benefit of hindsight, it could easily be argued that the nature of warfare at sea was inevitably bound to change, given the enormous technological changes that took place in the years preceding the war. The International Law Committee also acknowledged this fact, after a fashion, as the following quote demonstrated:

All attempts to forecast the course of naval warfare were liable to be falsified, and conventions made on hypotheses which were not realised not only hampered the striking power of the British Navy, but inevitably broke down in practice, when vital issues were at stake, and the Navy was strong enough to assert its superiority.

The prognosis of those who distrusted the power of the Navy to confine the fleets of the enemy to port, and who anticipated financial and commercial ruin in case of war, was not verified by the events. The illegal and inhumane methods of the enemy in his submarine campaign, dangerous though it was to British interests, would not have been prevented by international conventions; nor would the food supply of these islands have been safeguarded, had the Declaration of London been legally binding.⁶⁴⁹

The above paragraphs were quite telling with regard to the views of the Committee. The first paragraph for example seemed to warn against any attempts to forecast the way in which war at sea would be waged. The implied view was that whatever circumstances might arise, the Royal Navy would always be strong enough to defeat whatever adversaries encountered, be they physical or legal. The second paragraph was even more telling. The

⁶⁴⁷ Ibid., p.7.

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

point it alluded to was that ratification of the Declaration of London would have made absolutely no difference to what took place during the war and that Germany would have continued with its submarine warfare campaign regardless. This opinion was also supported by a red-pen comment in the margins of some correspondence with Sir Graham Bowers⁶⁵⁰ and is most likely from the pen of Admiral Hall, 'Germany would subscribe to any laws made in peace and would over ride [sic] them in war.'⁶⁵¹ This reinforced the hypothesis that international law represented only a minimal consensus and was not sufficiently powerful to prevent the so-called atrocities that took place. The strength of international law therefore remained dependent on the sovereign powers charged with enforcing its rulings. In the absence of any 'supra-sovereign' power in an international order of many sovereign states, international law was inherently weak. Prior to the Declaration of London and the First World War, this state of law although weak was stable. The adoption of unrestricted U-boat warfare by Germany only served to destabilise and ultimately destroy the weak consensus represented by international law. The emergence of the US as a global power and the arbiter of victory led by Wilson brought about the re-imposition of a new consensus of international law that reflected the changing and by no means steady balance in the world order of the immediate post-war years.

Rights of Neutrals

Whilst considering the subject of the Freedom of the Seas, it is also worth looking briefly at the rights of neutrals from a post-war perspective. The International Law Committee covered this issue but as with all matters concerning war at sea, controversy already surrounded this subject. In 1907, Alfred Mahan⁶⁵² discussed the Rule of 1756,⁶⁵³

⁶⁵⁰ Sir Graham Bowers was a member of the Grotius Society and was tasked by the Society in early 1918 to investigate various aspects of international law. His correspondence with the Admiralty (especially Admiral Hall) during his research for articles can be found in ADM 116/1865.

⁶⁵¹ Admiral Reginald Hall, *ADM 116/1865 Correspondence with Sir Graham Bowers* (1918).

⁶⁵² Captain Alfred Thayer Mahan USN, *Some Neglected Aspects of War* (London: Sampson Low, Marston and Co, 1907), p.191.

indicating that the rights of neutrals with regard to belligerent nations were one of habitual concern. The gist of the rule was that for a neutral to provide commercial benefit to a belligerent was entirely inconsistent with a position of neutrality. The neutral should not suffer but should in fact be able to continue to ply its trade in times of war and peace, with the exception of contraband in time of war. This concept appears very much at odds with the idea of neutrality because a neutral could blatantly favour one belligerent over another without any fear of reprisals from the other belligerent. Another issue of importance to this subject was to be the impartiality of the Prize Courts that dealt with such issues of captured goods. It is interesting to note, after all the deliberations over the *Zamora* case, it was upheld as an example demonstrating the freedom and independence that the Courts exercised from the executive branch of Government:

The British Prize Courts have, in the past, and particularly during the present war, asserted their freedom from executive control, and their complete independence as a judicial body. They base their decisions on international law, in their interpretation and understanding of which they decline to take any guidance from Orders in Council, or from other Departments of State (the *Zamora*). British Prize Courts are a permanent guarantee to neutrals that their legitimate rights will be respected and enforced.⁶⁵⁴

As written, it appeared that this independence had always been so and that the *Zamora* case simply reinforced it. From chapter six, it is clear that this was anything but the actual case and it calls into question the objectivity of the Committee with its hindsight view of the war.

Blockades

Tied closely to the subject of neutrals' rights was, of course, that of blockade. From earlier research in this thesis, one of the big issues was the question of what actually constituted a blockade and how it was enforced. The traditional Continental view of a blockade involved a chain of warships anchored so close to one another that a vessel

⁶⁵³ The Rule of 1756 was created by the Admiralty Courts during the Seven Years War (1756-1763). According to this rule, during wartime a neutral nation could not be granted trade that has been denied to it by a belligerent nation during peacetime. The reasoning behind the rule was that a neutral power that in wartime traded with or carried supplies for a belligerent nation or its colonies violated its neutrality by aiding the belligerent nation. (<http://specialcollections.wichita.edu/collections/ms/82-04/82-4-A.HTML>).

⁶⁵⁴ International Law Committee, *FO 800/920/11472*, p.9.

wishing to evade the blockade could not physically pass. The Anglo-American view was that the blockade simply had to be maintained by a force sufficient to make blockade running hazardous and therefore likely to lead to a capture; the number of ships involved was therefore irrelevant, as long as it achieved the aim. Other issues at hand included the notice required when establishing a blockade and how exactly a vessel could be defined as attempting to break a blockade.

Although Britain's blockade of Germany was not announced formally as a blockade, it was declared as a measure of reprisal:

Unquestionably, it does not conform to the technical rules heretofore recognised as essential to a valid blockade. Before the days of torpedoes, mines, submarines and aircraft, the prevailing conception was that a blockaded port must be closed by a cordon of ships stationed in the immediate offing or as near as was compatible with safety from the enemy's defences (which in those days consisted of guns), to make ingress and egress dangerous, if not impossible. It can hardly be maintained, however, that since the introduction of the new agencies and methods of naval warfare referred to above, the old requirement of blockade by cruiser cordon is now essential. The American Government in its note of 30th March⁶⁵⁵ expressed a readiness to admit that the old form was no longer practicable in the face of an enemy possessing the means and opportunity to make an effective defence by the use of submarines, mines, and aircraft. The long-range blockade must therefore be recognised as valid... If this is not recognised as an effective blockade, blockade under modern conditions is now impossible.⁶⁵⁶

It is quite clear that there existed a view by which blockade in the form traditionally perceived was considered completely impractical. Robust international law was required to justify the efforts to stop enemy trade not only by direct blockade of its ports, but also indirectly by restricting the trade of neutral nations. The problem with the law was therefore how to maintain the legitimacy of a codified system if it was to be abandoned or modified as soon as a country went to war:

Weapons develop so rapidly, and different wars vary so greatly, that the efficacy of international law can only be preserved by holding fast to a few elementary principles whilst retaining elasticity in their actual application. The attempt to embody the rules of maritime war in a rigid code definitely failed in this war. If, in 1909, we were willing to renounce rights which, independently of Germany's illegal submarine warfare, were essential to the exercise of British sea power six years later, there is no guarantee that another code of rules may not mean the abandonment of some other doctrine essential to our future salvation. Such mistakes are inevitable once legislation departs from the broad principles governing the doctrines of contraband, blockade, &c, and binds itself rigidly to the terms of a convention.⁶⁵⁷

⁶⁵⁵ Cd 8233 *Parliamentary Papers Miscellaneous No 14* (London, 1916).

⁶⁵⁶ Garner, 'Questions'.

⁶⁵⁷ International Law Committee, *FO 800/920/11472 The Freedom of the Seas (Full Report)* (London, 1918), para.24.

The conclusion drawn was therefore that instead of trying to produce a rigid set of rules tailored to cope with the problems of the day, the law should be kept as simple as possible:

Lord Stowell expressed the same idea when he said in the *Atlanta* [case] (6C Rob 440, 1 EPC 607): - All law is resolvable into general principles. The cases which may arise under new combinations of circumstances, leading to an extended application of principles, ancient and recognised by just corollaries may be infinite; but so long as the continuity of the original and established principles is preserved pure and unbroken, the practice is not now nor is it justly chargeable with being an innovation on the ancient law, when in fact, the Court does nothing more than apply old principles to new circumstances.⁶⁵⁸

Acceptance of Mines

Mines were established as a weapon of maritime warfare long before the beginning of the First World War. The technology was tried and tested (despite the failure of the British design to operate effectively during the early years of the war) and the strategy and tactics of mining were well understood in Britain. Their regulation was laid down and internationally recognised by the eighth Hague Convention. A direct comparison can be drawn between the international law governing the use of mines, and the attempts to codify the laws of Prize. Of the thirteen Articles in the eighth Hague Convention, only the first three were of any great relevance to the issue under investigation here. The first Article forbade the laying of unanchored automatic contact mines unless they became harmless one hour after being laid; the laying of anchored automatic contact mines that did not become harmless if they broke free from their moorings; and the use of torpedoes that do not become harmless once they had missed their target. The inclusion of torpedoes here indicated that it was a weapon in its infancy, being covered as it was by the rules for mines rather than any other weapon or weapon-delivery system e.g. torpedo boats or submarines. The second Article forbade the laying of automatic contact mines off an enemy's coast with the sole object of intercepting commercial shipping. Similarly, the third Article

⁶⁵⁸ A. Pearce Higgins, *Memorandum for HM Procurator General on Contraband Trade and Continuous Voyage* (nd).

required that when anchored automatic contact mines were used, every effort should be made to ensure the safety of peaceful shipping.

Britain had practically no mining capability when the war broke out, with no reserve of mines and just a few old minelayers. The doctrine had always been that the Royal Navy would have sufficient strength and numbers to keep all the enemy forces confined to their own harbours, or beat them decisively on the high seas. In a frank admission, Pearce Higgins noted the real worth of mines in the First World War:

Previous to this war any attempt to blockade the British Islands without first having destroyed our Fleet was considered impracticable, it never being contemplated that the submarine would be used as weapon to try and (to) effect a blockade by conducting unrestricted warfare against all merchant shipping. Failing as it has from the blockade point of view in spite of inflicting great losses in Merchant Vessels there seems little doubt that in any future conflict this method of warfare would again be adopted by certain powers against a hostile maritime country if thereby they thought to gain any advantage and no international law regarding it would prevent them or any other country from making use of it if necessary... At the present time the mine forms one of the principal methods of combating submarines and in our opinion the advantages to be derived from its unrestricted use when belligerent far outbalance any advantages we should gain as a neutral from its abolition or restriction.⁶⁵⁹

A Sub Committee of the Admiralty Reconstruction Committee supported this view on the use of mines. A summary report,⁶⁶⁰ provided a candid acknowledgement on the way in which the use of mines had changed and been perceived because of the First World War. It explained that the pre-war view of mines was that they should be eliminated as far as possible from war at sea, before going on to show how the conditions that developed during the First World War had in fact made them extremely valuable weapons. The report explained that the mine represented one of the principal methods by which U-boats could be countered. It even went as far as to state 'we would not desire the existing International Law on this subject [mines] to be modified in any way which would prevent us from employing mines as freely as we do at present.'⁶⁶¹

⁶⁵⁹ Ibid., p.7.

⁶⁶⁰ Sub Committee of the Admiralty Reconstruction Committee, *ADM 1/8546/329 Mines* (London, Admiralty, 1918).

⁶⁶¹ Ibid., p.1.

Submarines

The same Sub Committee of the Admiralty Reconstruction Committee also considered the use of submarines in the maritime war, as a result of the experienced gained during the First World War. Its ideal solution was for prohibition of the submarine during war. This was however an unrealistic expectation, akin to asking for the atomic bomb to be 'uninvented' albeit with the best humanitarian intentions, and the Committee acknowledged that achieving the prohibition of submarines from maritime warfare would be most unlikely. More realistically, the paper called for a return to traditional cruiser warfare in accordance with Prize rules such that 'no attack shall be launched against a merchant ship unless she has received and disregarded an unmistakable summons to surrender'.⁶⁶² Any call for limitations to be placed on the submarine being prohibited from any form of attack on merchant vessels was discounted on the basis that any such argument could well be extended to surface warships and therefore have a detrimental effect on the rights to stop and search merchant vessels suspected of blockade running.

The realities of modern maritime warfare were better explained by Admiral Hall in a paper before the Grotius Society. Here, he acknowledged not only the desire to make war less cruel and barbarous, but also the reality that in modern warfare between entire nations and their economies, there would inevitably be an increase in the number of lives lost at sea: 'war will more than ever be waged in future by the whole people and not by combatants only, it is perhaps not unreasonable that the sea-going population should take their share'.⁶⁶³

Abrogation of the Declaration of Paris

The 1856 Declaration of Paris remained in effect throughout the First World War, significantly outlasting the junior, but much larger Declaration of London. The post-war

⁶⁶² Sub Committee of the Admiralty Reconstruction Committee, *ADM 1/8546/329 Submarine Warfare* (London, Admiralty, 1918), p.1.

⁶⁶³ S.S. Hall, 'Submarine Warfare', *Transaction of the Grotius Society*, 5 - Problems of Peace and War, Papers Read before the Society in the Year 1919 (1919), p.84.

view taken by the International Law Committee was that ratification of the Declaration of Paris had been a mistake and that there had been little or no recorded consultation on this subject. The Committee's main objection to the Declaration of Paris was the 'ill-considered adoption of a principle of the "Freedom of the Seas" type.'⁶⁶⁴ The principle in question was that the neutral flag could cover enemy goods with the exception of contraband of war. Although little information has been found to support the discussions surrounding the Declaration of Paris, the International Law Committee's report did provide some illumination on this subject:

The draft was sent from Paris to London by Lord Clarendon⁶⁶⁵ with a private covering letter to Lord Palmerston,⁶⁶⁶ and is preserved in the Foreign Office, together with the minutes of all the members of the Cabinet, and the Queen's acceptance on Lord Palmerston's recommendation. It is clear from the minutes and the covering letter, that the principal argument in favour of acceptance was the conviction that Great Britain, after agreeing to the temporary arrangement with France in 1854, would be unable to re-assert her old practice against neutrals. The Declaration was sprung upon the public, and was accepted in spite of some opposition.

Great Britain in this way has abandoned her traditional practice – an abandonment which has embarrassed the navy in the prosecution of the present war, and, but for the illegal conduct of Germany, which enabled His Majesty to justify its actions as reprisals, would have made the Order in Council of the 11th March, 1915, difficult, and that of the 16th February, 1917, impossible to justify.⁶⁶⁷

It was not only the politicians who expressed a view on the Declaration of Paris. On 30 April 1918, the Admiralty, in an atypically plain-speaking statement, gave its own views on its role.

In their Lordships' opinion, it cannot be questioned that all conventions and declarations which place limitations on the exercise of sea power are to the disadvantage of the country which has the strongest naval force, and therefore, so long as we maintain our superiority on the sea, the provisions of the Declaration of London are an incalculable hindrance to a proper naval policy.

In their Lordships' views, our aim should be to rid ourselves of all that has been shown by the experience of this war to be detrimental to the exercise of our full sea power, rather than to attempt to fetter, by rules of international law, the sea power of the future, the conditions of which, with the progress of science, no man living can foresee.⁶⁶⁸

It is interesting to note that the language used in the second paragraph is almost identical to that cited earlier by Murray and demonstrates the potential for discrepancies, even in primary source documentation. The paramount interest of Britain was therefore

⁶⁶⁴ International Law Committee, *FO 800/920/11472*, para.16.

⁶⁶⁵ George William Frederick Villiers, fourth earl of Clarendon (1800–1870). Foreign Secretary 1852–1858.

⁶⁶⁶ Henry John Temple, third Viscount Palmerston (1784–1865). Prime Minister 1855–1858.

⁶⁶⁷ International Law Committee, *FO 800/920/11472*, p.12.

⁶⁶⁸ *Ibid.*

regarded as maintenance of belligerent rather than neutral rights; continued acceptance of the Declaration of Paris would only have jeopardised this situation and as a result, the International Law Committee recommended to the Foreign Office that, if possible, the Declaration of Paris be abrogated.

CONCLUSIONS

The conclusions to this thesis mark the intersection of law and history outside the normal bounds of academic study. They are grouped into a number of distinct areas ranging from: Bobbitt's ideas on an epochal war, through economic warfare, to the U-boats themselves, the role of the US, and finally, changes in international law.

Bobbitt

Bobbitt described the beginning of the First World War as the beginning of an epoch in world history that continued right through until the end of the Cold War.⁶⁶⁹ Although this thesis has not investigated this period in its entirety, it has become clear during the course of the research that the beginning of the First World War did mark the dividing point between epochs. With so many issues changing at the end of the First World War, it was almost inevitable that this point was considered as one of epochal change. What has become clear however is that the First World War did mark the end of an Old World Order but not necessarily the beginning of a New World Order. Bobbitt's idea that the long-war of 1914-1990 started at the beginning of the First World War was too simplistic. In reality, a period of international turbulence began in 1914 and continued until the mid 1920s. The First World War may have marked the end of an era but with the end of the war dragging on through such major landmarks as the Treaty of Versailles and the Leipzig trials, there was some significant 'dead time' in Bobbitt's construct. The new epoch could reasonably be said to have started after the Washington Naval Treaty,⁶⁷⁰ signed in 1922, and with it, the growth of Japanese resentment towards western-imposed limits on its warships.⁶⁷¹ The

⁶⁶⁹ Bobbitt, *Shield of Achilles*, p.23.

⁶⁷⁰ The Washington Naval Treaty limited the naval armaments of its five signatories: the US, Britain, Japan, France and Italy. The treaty was agreed at the Washington Naval Conference, held in Washington, D.C. from November 1921 to February 1922; it was signed by representatives of the treaty nations on 6 February 1922. The Washington Naval Treaty was later modified by the London Naval Treaties of 1930 and 1936. Germany's naval armaments had already been limited by the Treaty of Versailles.

⁶⁷¹ David C. Evans and Mark R. Peattie, *Kaigun. Strategy, Tactics, and Technology in the Imperial Japanese Navy, 1887-1941*. (Annapolis, Maryland: Naval Institute Press, 1997).

traditional ways of warfare both at sea and on land changed forever. The concept of war became far more than just armies and navies pitted against each other; entire economies were mobilised on a scale never before witnessed.

Economic Warfare

On the subject of British pre-First World War plans for a campaign of economic warfare against Germany, Offer noted 'despite the revelations of Bell⁶⁷² and Hankey,⁶⁷³ subsequent historians have not taken the story up'.⁶⁷⁴ The archival research conducted in the course of this thesis has shown that Britain certainly did make plans for economic warfare against Germany. These plans were however intended to bring about an end to the war in accordance with the prevailing short-war theory. They recognised at a surprisingly early stage (a good ten years prior to the First World War), that the only way to win a modern war was to extend the fight from one that not only involved the military and naval forces, but to one which encompassed the entire economies and resources of the belligerent nations. The Russian banker Ivan Bloch believed that war would prove to be so costly that it would lead to all-round economic bankruptcy and social reform. He also believed that bringing to bear the might of the economy was the only way to win a war, 'Therefore in war, the strongest will prove to be the nation which possesses the greatest number of arsenals and ready stores of ammunition and coal at points selected in times of peace.'⁶⁷⁵

A very important distinction between Britain's plans for economic blockade and Germany's U-boat campaign is, however, that Britain only really considered the blockade in its traditional sense i.e. stop and search ships, take prizes, impound vessels and so on. Germany's method of blockade was to use U-boats to sink the ships and in doing so, endanger the lives of the crews onboard. Conversely, Germany's U-boat blockade of Britain and the unrestricted warfare campaign of 1917, aimed at bringing about a swift end

⁶⁷² Bell, *Blockade*.

⁶⁷³ Hankey, *Supreme Command I*.

⁶⁷⁴ Offer, *The First World War*, p.229.

⁶⁷⁵ Ivan S. Bloch, *Is War Now Impossible?* (Aldershot: Grant Richards, 1899), p.107.

to the war by restricting supplies such as wheat, was thwarted not only by the introduction of the convoy system and the entry of the US into the war, but also by good housekeeping and increased agricultural output.

The U-Boats

The employment of U-boats as commerce destroyers was an innovation in naval strategy but it was to end in defeat for Germany. The strategy, whilst initially successful, did not achieve its desired effect of forcing Britain to sue for peace. It was ultimately Germany's use of the submarine and its violations of international law, which precipitated its downfall. In Germany itself, the high priority placed on maintaining the U-boat capability meant that talented officers from across the High Seas Fleet were drafted into submarines, leaving the less experienced ones in charge. This lack of experienced leadership could be considered as one of the enabling factors for the German naval mutinies that occurred towards the end of the First World War. The role played by submarines was therefore a fundamental one to the nature and outcome of the First World War at sea.

The First World War marked the true introduction of the submarine into the realm of naval warfare, regardless of whether it was favoured by any particular nation. The fact that the submarine existed as a potent weapon of naval warfare was sufficient to generate the requirement for its use by all belligerents in future conflicts. For Germany however, the use of its U-boats gave short-term tactical successes, but led to long-term strategic failure.

The US

The role of the US changed dramatically during the war. It has become clear during the course of this research that the US played a key role throughout the First World War, not only during the combat phases. In the years leading up to the war, the US became an increasingly powerful trading nation. In the debates following the Declaration of London,

the US demonstrated the growing, powerful voice developed not only by the likely belligerents in a European war, but also by states likely to remain neutral, such as itself. Throughout the war, the US under Wilson's direction tried to keep itself firmly neutral but as Germany's use of the U-boat as a commerce destroyer continued, so US patience wore thin. In the end, it was Germany's continued sinking of merchant vessels, especially US passenger liners, that brought the US and Germany into conflict. The use of the U-boat and the interpretation of international law taken by Germany were direct contributors to US entry into the war.

At the end of the war, it was US aid and Wilson's ultimately unfulfilled desire for a New World Order that helped to shape Europe in the immediate post-war years.

International Law

The First World War also changed the nature of international law at sea forever. The appeal in the *Zamora* case questioned the foundations of the Prize Court. It emphasised the need for Prize Courts to be exemplary in the separation of international law from domestic law if international law was to stay credible in the international arena. The domestic law embodied in Orders in Council was therefore found to be not binding on the British Prize Court, and in doing so, the Declaration of London was doomed, embodied as it was, by the Orders in Council. All the efforts to find a common understanding of international law were nullified and the Prize Courts were forced to turn to precedents, some of which had been developed many decades before during completely different wars. The precepts of international law not only fell apart during the First World War, but were also replaced by custom and practice that evolved in circumstances significantly different to the First World War. Woodrow Wilson hoped that the end of the First World War would mark the beginning of a New World Order. Wilson's idea of a New World Order emerging from the ruins of the First World War was not going to be realised for many years to come.

From the humanitarian point of view, many atrocities were committed at sea during the First World War. Of the countless ones considered prior to the Leipzig tribunal, none resulted in a conviction for atrocities committed by a U-boat. The law on the sinking of prizes was interpreted by Germany to permit U-boats to sink what they had captured; if this meant doing so whilst submerged in order to protect themselves from the dangers of self-defence undertaken by these merchant vessels then that was permitted under the German rules. Despite the greater moral implications of civilian lives being lost, the German rules were accepted in Leipzig as being the interpretation in force at the time and meant that U-boat Commanding Officers could not be held to account for following their orders. The use of Q-ships by Britain also detracted from any position of high moral authority and ensured that sufficient doubt could always be incorporated into any U-boat Commanding Officer's defence in that he was safeguarding the safety of his own crew by dispatching his prizes swiftly – *spurlos versenkt*.⁶⁷⁶

Germany's employment of the U-boats highlighted weaknesses in the emerging body of international law. The rapid changes in U-boat employment from the tactical to the strategic level that took place during the First World War, culminating in unrestricted warfare, swiftly outpaced all the international law in existence at the time. International law was simply unable to cope with the introduction of the submarine to naval warfare, and Germany's use of U-boats for unrestricted warfare.

Further Research

Throughout this thesis, there have been three areas that have deliberately not been reviewed in-depth and are worthy of further research in their own right. The first concerns the relations between Britain and the Scandinavian countries during the First World War. The policies adopted by the various countries involved were very complicated, with trade conducted across the North Sea and the Baltic to the benefit of both Britain and Germany.

⁶⁷⁶ *Spurlos versenkt* (German) Sunk without trace.

The arrangements to maintain the Swedish, Norwegian and Danish economies were only investigated very lightly and have much scope for original research.

The next topic for further research should be the relationship between Britain and the US, particularly from the political viewpoint. Bobbitt started to investigate the relationship between House and Grey, but this could easily be expanded further, drawing parallels between the high politics of the President and the Prime Minister, and perhaps the military politics involved with US intervention.

The final and perhaps most logical area for further research would be to continue the story of international law and naval weapons by investigating the development of international law and arms control between the wars. The Washington Naval Conference of 1921-22 and the London Naval Conferences of 1930 and 1935 were important milestones in inter-war arms control and it would be an area worthy of further research to investigate the impact that the First World War made on these Conferences.

BIBLIOGRAPHY

1. Primary Archival Sources

Principal Series from The National Archives

Admiralty:

ADM 1/8468/225 Statement and Report by Captain Consett on Return from Duty as Naval Attache in Scandinavia, 1917.

ADM 1/8480/36 Paper by the First Sea Lord for the War Cabinet on Naval Policy with regard to the Submarine Menace, 1917.

ADM 1/8545/312 Freedom of the Seas, 1918.

ADM 1/8546/329 Mines and Submarine Warfare, 1918.

ADM 1/8611/158 Cmd 1450 German War Trials - Report of Proceedings before the Supreme Court in Leipzig, 1921.

ADM 116/866B Naval Staff Memoranda: I. Submarine Automatic Mines (1905). II. The Building Programme of the British Navy - The Lessons of the Russo-Japanese War in their Application to the Programme of Armoured Ship-Building of Britain, Germany and France. III. Submarine Mine Defences (CID Paper 43B dated November 1904) Dissent by Major General Grierson, Director of Military Operations, from the Admiralty Opinions Expressed in Paper 40B, 1904/5.

ADM 116/1070 Declaration of London & Naval Prize Law 1908-11 notes on German and Japanese memoranda, 1908-11.

ADM 116/1233-1235 Memoranda regarding the Declaration of London, 1914-16.

ADM 116/1865 Papers of the International Law Committee, 1918.

ADM 116/3619 Memorandum by Sir Maurice Hankey on Blockade and the Laws of War, 1927.

ADM 137/2749, 2864, 2872, 4698 Food Supply in Time of War and Economic Intelligence Reports, 1901-27.

ADM 231/41-47 Naval Intelligence department reports including Navy Act 1900 and a diary of the Russo-Japanese War, 1904-06.

Cabinet Office:

CAB 1/11 Notes and diplomatic correspondence, 1915.

CAB 1/15/1 Memorandum on Britain's Strategy for Controlling German Imports and Exports, 1915.

CAB 16/5 The Economic Effect of War on German Trade (CID Paper E-4)

Appendix V, 1908.

CAB 37/105-107 Correspondence Regarding Declaration of London and Hague Conventions, 1911.

CAB 38 Minutes of Meetings of CID, 1904-11.

Foreign Office:

FO 115/1949 Diplomatic correspondence on the Declaration of London and the *Zamora* case, 1915.

FO 608/245 Captured German documents relating to submarine warfare, 1917-18.

FO 800/918-20 Ministers' and officials' papers on matters of Prize Law, 1914-18.

FO 902/1, 4, 37 Confidential trade reports from the Trade Clearing House, 1915-17.

Treasury Solicitor:

TS 26/15 German war trials, 1921.

TS 26/13 Interim Report from the Committee of Enquiry into Breaches of the Laws of War, 1919.

TS 13/787 Various Affidavits Relating to the *Zamora*, 1915.

Admiralty Library

The Admiralty library in Portsmouth (formerly in Whitehall) contains many technical histories and the Naval Staff Monologues series:

Naval Staff Monologues (Home) VIII, X, XII Home Waters

The Admiralty Technical History of Convoy, nd

Churchill Records Centre

Hankey, Churchill and Fisher papers: eg FISR 5 Series comprising a variety of notes and documents produced by Fisher:

FISR 5/22 (4323) Mine Laying, 1914.

FISR 5/30 (4389) Handwritten notes by Fisher on Why the Germans are Doing so Well, nd.

FISR 8/60 Notes on Mining by Churchill, 1914.

FISR 5/30 (4398) Report by Fisher: The Oil Engine and the Submarine - A Contribution to the Consideration of future Sea Fighting, 1917.

2. Printed Primary Sources

Newspaper

The Times 1909-1923.

Journal Articles

Baldwin, Simeon E., 'The Proposed Trial of the Former Kaiser', *Yale Law Journal*, 29, no. 1 (Nov. 1919), pp.75-82.

Bourgeois Admiral, 'La Guerre de Course, la Grande Guerre et les Torpilles,' *Nouvelle Revue*, II (1886), p.499.

Custance, Reginald, 'The Freedom of the Seas', *Transactions of the Grotius Society*, 5, Problems of Peace and War, Papers Read before the Society in the Year 1919 (1919), pp.65-70.

Editorial Comment, 'Biographical Notice of Mr Justice Story', *The American Whig Review*, 3, no. 1 (January 1846), pp.68-82.

---, 'Contraband of War', *The American Journal of International Law*, 9, no. 1 (January 1915), pp.210-220.

Finch, George A., 'Superior Orders and War Crimes', *American Journal of International Law*, 15, no. 3 (Jul. 1921), pp.440-445.

Firth, A. S., 'An Analysis of the Increased Cost of Clothing Materials during the Period July, 1914, to October, 1918', *The Economic Journal*, 28, no. 112 (Dec. 1918), pp.452-456.

Garner, James W., 'Some Questions of International Law in the European War', *American Journal of International Law*, 9, no. 3 (Jul. 1915), pp.594-626.

---, 'Some Questions of International Law in the European War', *American Journal of International Law*, 9, no. 4 (Oct. 1915), pp.818-857.

Hall, SS, 'Submarine Warfare', *Transaction of the Grotius Society*, 5 - Problems of Peace and War, Papers Read before the Society in the Year 1919 (1919), pp.82-94.

Jefferson, Mark, 'Our Trade in the Great War', *Geographical Review*, 3, no. 6 (June 1917), pp.474-480.

Judicial Committee of the Privy Council, 'Part Cargo Ex SS. Zamora', *American Journal of International Law*, X, no. 2 (Apr. 1916), pp.422-444.

Judicial Decisions, 'British Prize Court Decisions: The Zamora', *American Journal of International Law*, IX, no. 4 (Oct 1915), pp.1005-1015.

---, 'The Alwina', *American Journal of International Law*, X, no. 3 (Jul. 1916), pp.641-653.

- , 'The Leonora', *American Journal of International Law*, XIII, no. 4 (Oct. 1919), pp.814-831.
- , 'The Stigstad', *American Journal of International Law*, XIII, no. 1 (Jan. 1919), pp.127-133.
- , 'The Proton', *American Journal of International Law*, XIV, no. 1 (Jan. - Apr. 1920), pp.264-268.
- , 'German War Trials: Judgment in Case of Commander Karl Neumann', *American Journal of International Law*, 16, no. 4 (Oct. 1922), pp.704-708.
- , 'German War Trials: Judgment in Case of Lieutenants Dithmar and Boldt', *American Journal of International Law*, 16, no. 4 (Oct. 1922), pp.708-724.
- no author, 'Congestion on the Rail Network', *Board of Trade Journal*, (24 January 1918), p.92.
- , 'Notes on International Law', *Journal of Comparative Legislation and International Law*, 3, no. 1 (1921), pp.123-131.
- Norris, George W, 'The Supply of Wheat', *Annals of the American Academy of Political and Social Science*, 78 (July 1918), pp.164-168.
- Notz, William, 'The World's Coal Situation During the War: I', *The Journal of Political Economy*, 26, no. 6 (Jun. 1918), pp.567-611.
- Official Documents, 'The Declaration of Paris, 1856', *American Journal of International Law*, 1, no. 2, Supplement: Official Documents (Apr. 1907), pp.89-90.
- Pollard, Sidney, 'British and World Shipbuilding, 1890-1914: A Study in Comparative Costs', *The Journal of Economic History*, 17, no. 3 (1957), pp.426-444.
- Ridsdale, Percival S., 'War's Destruction of British Forests', *American Forests*, 25, May (1919), p.1027.
- Scott, James Brown, 'The Declaration of London of February 26, 1909: Part I', *American Journal of International Law*, 8, no. 2 (Apr. 1914), pp.274-329.
- Sherman, G E, and others, 'Orders in Council and the Law of the Sea', *The American Journal of International Law*, 16, no. 4 (Oct 1922), pp.561-584.
- Spindler, Alfred, Rear Admiral German Navy,, 'The Value of the Submarine in Warfare', *US Naval Institute Proceedings*, May 1926 (1926), p.837.
- Stockton, Charles H., 'The Declaration of Paris', *American Journal of International Law*, 14, no. 3 (Jul. 1920), pp.356-368.
- Stowell, Ellery C, 'The International Naval Conference and the Declaration of London', *The American Political Science Review*, III, no. 4 (1909), pp.489-506.

Trabue, Edmund F., 'The Law of the Sea and the Great War', *Virginia Law Review*, 6, no. 4 (Jan. 1920), pp.240-275.

Wilson, Woodrow, 'The First Lusitania Note to Germany', *Essential Documents in American History*, Essential Documents 1492-Present (13 May 1915), 1, 2p.

---, 'Lusitania Notes', *Essential Documents in American History*, Essential Documents 1492-Present (1915), 1, 18p.

Wise, Jennings C., 'Tort at International Law', *American Journal of International Law*, XVII, no. 2 (Apr. 1923), pp.245-251.

Wright, Quincy, 'Conflicts of International Law with National Laws and Ordinances', *American Journal of International Law*, XI, no. 1 (Jan 1917), pp.1-21.

Zimmern, Dorothy M., 'The Wool Trade in War Time', *The Economic Journal*, 28, no. 109 (Mar. 1918), pp.7-29.

Memoirs/Biographical Works

Churchill, Winston S, *The World Crisis 1911-1914* (London: Thornton Butterworth Ltd, 1924).

Hankey, M, Sir, *The Supreme Control at the Paris Peace Conference 1919. A Commentary*. (London: George Allen and Unwin Ltd, 1963).

Hankey, Maurice, Lord, *The Supreme Command 1914-1918*, 2 vols (London: George Allen & Unwin Ltd, 1961).

von Hindenburg, Paul Ludwig Hans Anton, *Out of My Life*, trans. by Frederick Appleby Holt (London: Cassell & Co, 1920).

James, Admiral Sir William, *The Eyes of the Navy. A Biographical study of Admiral Sir Reginald Hall* (London: Methuen & Co Ltd, 1955).

Lansing, Robert, *War Memoirs* (London: Rich & Cowan Ltd, 1935).

Lloyd George, David, *War Memoirs*, 6 vols (London: Nicolson and Watson, 1933-1936).

---, *War Memoirs I* (London: Ivor Nicholson & Watson, 1934).

Ludendorff, Erich von, *My War Memories 1914-1918*, 2 vols (Uckfield: The Naval and Military Press Ltd, 1919).

Marder, Arthur J, *Portrait of an Admiral. The Life and Papers of Sir Herbert Richmond*, (London: Jonathan Cape, 1952).

McKenna, Stephen, *Reginald McKenna 1863-1943 - A Memoir* (London: Eyre & Spottiswood, 1948).

Seymour, Charles, *The Intimate Papers of Colonel House* (Boston: Houghton Mifflin Company, 1926).

Sims, William S, R Adm, *The Victory at Sea* (London: John Murray, 1921).

von Tirpitz, Alfred, Grand Admiral, *My Memoirs*, 2 vols (New York: AMS Press, 1919).

Woodward, David R, *Field Marshall Sir William Robertson, Chief of the Imperial General Staff in the Great War* (Westport, Conn: Praeger, 1998).

Official Histories/Records

Bacon, Reginald Hugh Spencer, *The Concise Story of the Dover Patrol 1915-1917* (London: Hutchinson, 1932).

Bell, AC, *A History of the Blockade of Germany and of the Countries Associated with Her in the Great War Austria-Hungary, Bulgaria and Turkey. 1914-1918*. (London: Historical Section, Committee of Imperial Defence, 1937).

Congress, *American State Papers: Documents, Legislative and Executive, of the Congress of the United States. Class I: Foreign Relations. Selected and edited under the authority of Congress*. (Washington, DC: Gales and Seaton, 1832-1861).

de Chair, Dudley Rawson Stratford, Rear Admiral,, 'Rear Admiral de Chair to Admiralty, HMS Alsatian, 20 Apr 1915, Report of Proceedings, 9 March - 20 April 1915', in *The Maritime Blockade of Germany in the Great War: the Northern Patrol 1914-1918* (2003), ed. by John D Grainger, (Aldershot: Ashgate Publishing Limited for the Navy Records Society, 1915).

DTI, *Historical Coal Data: Coal Production Since 1853*, accessed 18 Feb 07, Available: <http://www.dti.gov.uk/files/file18938.xls>.

Fayle, C Ernest, *Seaborne Trade*, 3 vols (London: John Murray, 1920).

Holtzendorff, von, *The Holtzendorff Memorandum*, accessed 24 May 2007, The World War One Document Archive. Available: <http://www.gwpda.org/naval/holtzendorffmemo.htm>.

ICRC, *Convention XII relative to the Creation of an International Prize Court.*, 18 October 1907. Available: <http://www.icrc.org/ihl.nsf/FULL/235?OpenDocument>.

---, *Declaration concerning the Laws of Naval War*, London, 26 February 1909. Available: <http://www.icrc.org/ihl.nsf/FULL/255?OpenDocument>.

---, *Additional Protocol to the Convention relative to the Establishment of an International Prize Court*, 19 September 1910. Available: <http://www.icrc.org/ihl.nsf/FULL/260?OpenDocument>.

---, *Procès-verbal relating to the Rules of Submarine Warfare set forth in Part IV of the Treaty of London of 22 April 1930*. London, 6 November 1936., 6 November 1936.

Available: <http://www.icrc.org/ihl.nsf/FULL/330?OpenDocument>.

International Naval Conference, (House of Commons Session 1909 (9 Edward VII), HMSO, 1909).

National Bureau of Economic Research, *France Coal Production 1870-1918*, nd.

Available: <http://www.nber.org/databases/macroeconomy/rectdata/01/a01214.dat>.

---, *Germany Coal Production, Total Jan 1901-Jan 1924*, accessed 18 Feb 07. Available:

<http://www.nber.org/databases/macroeconomy/rectdata/01/m01119b.dat>.

Newbolt, Henry, *Naval Operations IV* (London: Longmans Green and co, 1928).

---, *Naval Operations V* (London: Longmans, Green & Co, 1931).

Peace Treaty of Versailles, 28 Jun 1919. Available:

<http://www.hcu.ox.ac.uk/mirrors/www.lib.byu.edu:80/~rdh/wwi/versa/versa7.html>.

Scheer, Reinhard, Admiral, *Germany's High Sea Fleet in the World War* (London: Cassell and Company Ltd, 1920).

The Avalon Project at Yale Law School, *President Woodrow Wilson's Fourteen Points*, accessed 5 March 2007. Available:

<http://www.yale.edu/lawweb/avalon/wilson14.htm>.

---, *Laws of War : Declaration of Paris; April 16, 1856.*, accessed 16 Jan 07. Available:

<http://www.yale.edu/lawweb/avalon/lawofwar/decparis.htm>.

Treherm, Ernest Charles Meldon, *British and Colonial Prize Cases. Reports of Prize Cases Decided during the Present War in the Courts of Great Britain and the Overseas Dominions.*, 3 vols (London: Stevens and Sons; Sweet and Maxwell, 1915-22).

US Department of State, *Debates in the British Parliament 1911-1912 on the Declaration of London and the Naval Prize Bill* (Washington: Government Printing Office, 1919).

3. Secondary Published Sources

Journal Articles/Essays

- Afflerbach, Holger, *Wilhelm II as Supreme Warlord in the First World War*, in Mombauer, Annika, and Deist, Wilhelm, *The Kaiser, New Research on Wilhelm II's Role in Imperial Germany*, (Cambridge: Cambridge University Press, 2003).
- Albrecht, Erich 'Requisitionen von neutralen Privateigentum', *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, 6, no.1 (1912) (np).
- Bailey, Katherine, 'The Zimmermann Telegram', *British Heritage*, 20, no. 4 (Jun/Jul 1999), p.15.
- Bulhof, Johannes, What If? Modality and History, *History and Theory*, 38, no.2 (May 1999), pp.145-168.
- Crouzet, François, Wars, Blockade, and Economic Change in Europe, 1792-1815, *The Journal of Economic History*, 24, no.4 (December 1964), pp.567-588.
- French, David, *The Strategy of Unlimited Warfare? Kitchener, Robertson and Haig* in Chickering, Roger and Förster, Stig (eds), *Great War, Total War. Combat and Mobilization on the Western Front* (Cambridge: Cambridge University Press, 2000).
- French, David, 'The Meaning of Attrition 1914-1916', *The English Historical Review*, 103, no. 407 (April 1988), pp.385-405.
- Gayer, A, Captain German Navy, 'German Submarine Operations, 1914-1918', *US Naval Institute Proceedings*, April (1926), p.622.
- Herwig, Holger, *Total Rhetoric, Limited War. Germany's U-Boat Campaign, 1917-1918* in Chickering, Roger and Förster, Stig (eds), *Great War, Total War. Combat and Mobilization on the Western Front* (Cambridge: Cambridge University Press, 2000).
- Horne, John, 'Focus: Crimes against Humanitarian Law: International Trials in Perspective. Introduction,' *European Review*, 14, no.4 (2006), pp.415-419.
- Howard, N P, 'The Social and Political Consequences of the Allied Food Blockade of Germany, 1918-19,' *German History*, 11, no. 2 (June 1993), pp.161-188.
- Karau, Mark, 'Twisting the Dragon's Tail: The Zeebrugge and Ostend Raids of 1918', *The Journal of Military History*, 67, no. 2 (April 2003), pp.455-481.
- Kramer, John, The First Wave of International War Crimes Trials: Istanbul and Leipzig, *European Review*, 14, no.4, (2006), pp.441-455.
- Kunz, Josef L., 'British Prize Cases, 1939-1941', *American Journal of International Law*, 36, no. 2 (April 1942), pp.204-228.

- Lundeberg, Philip K, 'The German Naval Critique of the U-Boat Campaign, 1915-1918', *Military Affairs*, 27, no. 3 (Autumn 1963), p.105-118.
- McDermott, John, 'Trading With the Enemy: British Business and the Law During the First World War', *Canadian Journal of History*, 32, no. 2 (Aug 1997), p.202.
- Offer, Avner, *The Blockade of Germany and the Strategy of Starvation, 1914-1918* in Chickering, Roger and Förster, Stig (eds), *Great War, Total War. Combat and Mobilization on the Western Front* (Cambridge: Cambridge University Press, 2000).
- Rahn, Werner, *The German Naval War in 1914-18: Strategy and Experience* in Cecil, Hugh and Liddle, Peter H. (eds), *Facing Armageddon. The First World War Experienced* (London: Leo Cooper, 1996).
- Stibbe, Matthew, *Germany's 'Last Card'. Wilhelm II and the Decision in Favour of Unrestricted Submarine Warfare in January 1917* in Mombauer, Annika and Deist, Wilhelm, *The Kaiser, New Research on Wilhelm II's Role in Imperial Germany*, (Cambridge: Cambridge University Press, 2003).
- Sumida, John, *British Naval Administration and Policy in the Age of Fisher*, *The Journal of Military History*, 54, no.1 (Jan 1990), pp.1-26.

Books

- Angell, Norman, *The Great Illusion: A Study of the Relation of Military Power to National Advantage* (London: William Heinemann, 1909).
- Armitage, David, *The Free Sea by Hugo Grotius*, Natural Law and Enlightenment Classics, ed. by Knud Haakonssen, (Indianapolis, Indiana: Liberty Fund Inc, 2004).
- Berghahn, V.R., *Der Tirpitz-Plan : Genesis und Verfall einer innenpolitischen Krisenstrategie unter Wilhelm II*, (Dusseldorf: Droste Verlag, 1971).
- , *Germany and the Approach of War in 1914*, Second edn (New York: St Martin's Press, 1993).
- Best, Geoffrey, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (London: George Weidenfield & Nicolson Ltd, 1980).
- Black, Jeremy, *Rethinking Military History* (London: Routledge, 2004).
- , *The Dotted Red Line: Britain's Defence Policy in the Modern World* (London: Social Affairs Unit, 2006).
- Bloch, Ivan S, *Is War Now Impossible?* (Aldershot: Grant Richards, 1899).
- Bobbitt, Philip, *The Shield of Achilles: War, Peace and the Course of History* (London: Penguin Books, 2002).

- Bridgland, Tony, *Outrage at Sea. Naval Atrocities of the First World War*. (Barnsley: Leo Cooper, 2002).
- Burk, Kathleen, *Britain, America and the Sinews of War, 1914-1918* (London: George Allen & Unwin, 1985).
- Bynkershoek, Cornelius van, *De dominio maris dissertatio ...*, Classics of International Law (New York: Oxford University Press, 1923).
- Cecil, Hugh and Liddle, Peter H. (eds), *Facing Armageddon. The First World War Experienced* (London: Leo Cooper, 1996).
- Chambers, Frank P, *The War Behind the War 1914-1918* (London: Faber and Faber Ltd, 1939).
- Childers, Erskine, *The Riddle of the Sands* (Harmondsworth: Penguin Books Ltd, 1903).
- Chickering, Roger, *Imperial Germany and the Great War, 1914-1918*. (Cambridge: Cambridge University Press, 1998).
- and Förster, Stig (eds), *Great War, Total War. Combat and Mobilization on the Western Front* (Cambridge: Cambridge University Press, 2000).
- Corbett, JS, *Some Principles of Maritime Strategy* (London: Longmans, Green and Co, 1911).
- Cowie, Captain JS, *Mines, Minelayers and Minelaying* (London: Oxford University Press, 1949).
- Cruttwell, Charles Robert Mowbray Fraser, *A History of the Great War, 1914-1918* (Oxford: Clarendon Press, 1934).
- Daniel, Ute, *The War from Within. German Working-Class Women in the First World War* (Oxford: Berg, 1997).
- Davis, Belinda. J., *Home Fires Burning. Food, Politics and Everyday Life in World War I Berlin* (London: Chapel Hill, 2000).
- Davis, Lance E. and Engerman, Stanley L., *Naval Blockades in Peace and War: An Economic History since 1750* (New York: Cambridge University Press, 2006).
- Dicey, A. V., *Introduction to the Study of the Law of the Constitution*, 8th edn (London: Macmillan 1915).
- Evans, David C, and Mark R Peattie, *Kaigun. Strategy, Tactics, and Technology in the Imperial Japanese Navy, 1887-1941*. (Annapolis, Maryland.: Naval Institute Press, 1997).
- Ferguson, Niall, *The Pity of War* (London: Penguin Books, 1998).
- , *Virtual History: Alternatives and Counterfactuals* (New York: Basic Books, 1999)

- Floto, Inga, *Colonel House in Paris. A Study of American Policy at the Paris Peace Conference 1919*. (Copenhagen: Universitetsforlaget I Aarhus, 1973).
- Gat, Azar, *A History of Military Thought: From the Enlightenment to the Cold War* (Oxford: Oxford University Press, 2001).
- Gibson Bowles, Thomas, *Sea Law and Sea Power* (London: John Murray, 1910).
- Gibson, RH, and M Prendergast, *The German Submarine War 1914-1918* (London: Constable & Co Ltd, 1931).
- Gilbert, Bentley B, *David Lloyd George: a political life*. (London: Batsford, 1987).
- Gordon, Andrew, *The Rules of the Game: Jutland and British Naval Command* (London: John Murray, 1996).
- Grant, Robert M, *U-Boats Destroyed. The Effect of Anti-Submarine Warfare, 1914-1918*. (London: Putnam, 1964).
- Gray, Edwyn, *The Killing Time* (London: Seeley, Service and Co. Ltd, 1972).
- Guichard, Louis, *The Naval Blockade 1914-1918* (London: Philip Allan & Co Ltd, 1930).
- Hackmann, Willem, *Seek and Strike: Sonar, Anti-Submarine Warfare and the Royal Navy 1914-54* (London: HMSO, 1984).
- Halpern, Paul G, *A Naval History of World War I* (London: UCL Press, 1994).
- Handel, Michael, *Masters of War: Classic Strategic Thought* (London: Frank Cass, 1992).
- Hankel, Gerd, *Die Leipziger Prozesse. Deutsche Kriegsverbrechen und ihre strafrechtliche Verfolgung nach dem Ersten Weltkrieg* (Hamburg: Hamburger Edition, 2003).
- Hardach, Gerd, *The First World War 1914-1918* (London: Allen Lane, 1977).
- Herwig, H. H., *Luxury Fleet: The Imperial German Navy 1888-1918* (London: Allen & Unwin, 1980).
- , *The First World War: Germany and Austria-Hungary 1914-1918* (London: Arnold, 1997).
- Hezlet, Arthur, V Adm Sir, *The Submarine and Sea Power* (London: Peter Davies, 1967).
- Hinsley, F H, *Power and the Pursuit of Peace* (Cambridge: Cambridge University Press, 1963).
- Holland, Thomas Erskine, *A Manual of Naval Prize Law; Founded upon the Manual... by G Lushington* (London: Eyre & Spottiswoode, 1888).
- Horne, John, and Alan Kramer, *German Atrocities, 1914. A History of Denial* (New Haven and London: Yale University Press, 2001).
- Hough, Richard, *The Great War at Sea, 1914-1918*. (Edinburgh: Birlinn, 2000).

- Hurst, C.J.B., and F.E. Bray, *Russian and Japanese Prize Cases: Being a Collection of Translations and Summaries of the Principal Cases Decided by the Russian and Japanese Prize Courts Arising out of the Russo-Japanese War, 1904-05*. Edited by C. J. B. Hurst and F. E. Bray, 2 vols (London: np, 1912).
- IWW, Education Bureau of the IWW for Coal Mine Workers' Industrial Union no. 220, *Coal Mine Workers and their Industry* (Chicago: The Industrial Workers of the World, 1922).
- Kelsey Francis, *De Jure Belli ac Pacis Libri Tres* by Hugo Grotius, 2 vols (Oxford: Clarendon Press, 1925).
- Kennedy, Paul M, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (London: Random House, 1988).
- Lentin, A, *Lloyd George, Woodrow Wilson and the Guilt of Germany. An Essay in the Pre-History of Appeasement*. (Baton Rouge: Louisiana State University Press, 1984).
- Liddell Hart, BH, *The Real War 1914-1918* (London: Little, Brown & Co, 1930).
- Mahan, AT, Capt USN, *Some Neglected Aspects of War* (London: Sampson Low, Marston and Co, 1907).
- Marder, Arthur J, *From the Dreadnought to Scapa Flow. The Royal Navy in the Fisher era, 1904-1919*, 2. The war years: to the eve of Jutland. (London: Oxford University Press, 1965).
- , *From the Dreadnought to Scapa Flow Vol IV. 1917: Year of Crisis*. (London: Oxford University Press, 1969).
- Massie, Robert K, *Dreadnought: Britain, Germany and the Coming of the Great War* (London: Pimlico, 1992).
- Mombauer, Annika, *Helmuth von Moltke and the Origins of the First World War*. (Cambridge: Cambridge University Press: 2001).
- , *The Origins of the First World War: Controversies and Consensus* (Harlow: Pearson Education Ltd, 2002).
- and Deist, Wilhelm, *The Kaiser, New Research on Wilhelm II's Role in Imperial Germany*, (Cambridge: Cambridge University Press, 2003).
- Naval Staff Directorate, *BR 1806 British Maritime Doctrine Second Edition* (London: The Stationery Office, 1999).
- Neff, Stephen C, *War and the Law of Nations: A General History* (Cambridge: Cambridge University Press, 2005).

Offer, Avner, *The First World War: An Agrarian Interpretation* (New York: Oxford University Press, 1989).

Parrish, Thomas, *The Submarine: A History* (London: Penguin Books, 2004).

Perkins, J David, *German Submarine Losses from all Causes during World War One*, accessed 12 May 07. Available: <http://www.gwpda.org/naval/sml00001.htm>.

Piggott, Francis, *The Declaration of Paris 1856 - Law of the Sea*, 5 vols (London: University of London Press Ltd, 1919).

Politakis, George P, *Modern Aspects of the Laws of Naval Warfare and Maritime Neutrality* (Geneva: Graduate Institute of International Studies, 1998).

Pyke, H. Reason, *Contraband and the War*, Oxford Pamphlets no 69, (Oxford: Oxford University Press, 1915).

The Recovery Case (Webb, Master). 6C Rob 341/165 English Law Report 955. Admiralty Court 1807.

Ronzitti, Natalino (ed), *The Law of Naval Warfare* (Dordrecht, NL: Martinus Nijhoff, 1988).

Scheck, Raffael, *Alfred von Tirpitz and German Right-Wing Politics, 1914-1930*. (Humanities Press Inc: Boston, 1998).

Schmitt, Carl, *Political Theology: Four Chapters on the Concept of Sovereignty*, 1922, trans. by George Schwab (Chicago: University of Chicago Press, 2005).

Schubert, Paul, and Langhorne Gibson, *Death of a Fleet, 1917-1919. An Account of the Mutinies in the German Navy*. (New York: Coward McCann, 1932).

Scott, James B., *Cases on International Law Principally Selected from Decisions of English and American Courts*. (St. Paul: West Pub. Co., 1922).

Selden, John, *Mare Clausum seu de Dominio Maris libri duo* (London: Will Stanesbeius, 1635).

Steel, Ronald, *Walter Lippmann and the American Century* (Boston: Little Brown, 1980).

Steinberg, Jonathan, *Yesterday's Deterrent. Tirpitz and the Birth of the German Battle Fleet*. (London: Macdonald, 1965).

Stevenson, David, *1914-1918: The History of the First World War* (London: Allen Lane, 2004).

Strachan, Hew, *The First World War: To Arms*, I, III vols (Oxford: Oxford University Press, 2001).

Sumida, Jon Tetsuro, *In Defence of Naval Supremacy: Finance, Technology and British Naval Policy 1889-1914* (Winchester, Mass: Unwin Hyman Ltd, 1989).

---, *Inventing Grand Strategy and Teaching Command*. (Washington D.C.: The Woodrow Wilson Center Press, 1997).

Turner, John, *Britain and the First World War* (London: Unwin Hyman Ltd, 1988).

Vattel, Emmerich de, *Le droit des gens, ou principes de la loi naturelle ...* (1758)
(Washington: Carnegie Institute, 1916).

Vincent, C Paul, *The Politics of Hunger. The Allied Blockade of Germany, 1915-1919*.
(Athens, Ohio: Ohio University Press, 1985).

Walzer, Michael, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*.
(New York: Penguin, 1977).

Williams, GJR, *The Rhondda - Coal Prices 1840-1938* nd, Available:
http://www.therhondda.co.uk/facts/coal_prices_1840_1938.html.

Wilson, Trevor, *The Myriad Faces of War* (Cambridge: Polity Press, 1986).

Woodward, Llewellyn, *Great Britain and the War of 1914-1918* (London: Methuen & Co Ltd, 1967).

4. Unpublished Theses

Brown, WM, 'Scientists and the Admiralty: Conflict & Collaboration in Anti-Submarine Warfare 1914-1921' (PhD, King's College, 1987).

Dash, Michael Wynford, 'British Submarine Policy 1853-1918' (PhD, London University, 1990).

Lambert, Nicholas A, 'The Influence of the Submarine Upon Naval Strategic Thinking 1898-1914' (PhD, Bodleian College, 1992).

Appendices

Appendix 1: The Declaration of London, 26 February 1909⁶⁷⁷

CHAPTER I - BLOCKADE IN TIME OF WAR

Article 1. A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Article 2. In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective - that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

Article 3. The question whether a blockade is effective is a question of fact.

Article 4. A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

Article 5. A blockade must be applied impartially to the ships of all nations.

Article 6. The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

Article 7. In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

⁶⁷⁷ Source: ICRC website, <http://www.icrc.org/ihl.nsf/FULL/255?OpenDocument>. Accessed 4 July 2007.

Article 8. A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

Article 9. A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name. It specifies:

- (1) The date when the blockade begins;
- (2) the geographical limits of the coastline under blockade;
- (3) the period within which neutral vessels may come out.

Article 10. If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9(1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

Article 11. A declaration of blockade is notified:

- (1) To neutral Powers, by the blockading Power, by means of a communication addressed to the Governments direct, or to their representatives accredited to it;
- (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

Article 12. The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

Article 13. The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

Article 14. The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

Article 15. Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

Article 16. If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time. If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

Article 17. Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

Article 18. The blockading forces must not bar access to neutral ports or coasts.

Article 19. Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

Article 20. A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

Article 21. A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

CHAPTER II - CONTRABAND OF WAR

Article 22. The following articles may, without notice,⁶⁷⁸ be treated as contraband of war, under the name of absolute contraband:

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

⁶⁷⁸ Note in the original: In view of the difficulty of finding an exact equivalent in English for the expression 'de plein droit', it has been decided to translate it by the words 'without notice,' which represent the meaning attached to it by the draftsman as appears from the General Report.

- (3) Powder and explosives specially prepared for use in war.
- (4) Gun-mountings, limber boxes, limbers, military waggons, [sic] field forges, and their distinctive component parts.
- (5) Clothing and equipment of a distinctively military character.
- (6) All kinds of harness of a distinctively military character.
- (7) Saddle, draught, and pack animals suitable for use in war.
- (8) Articles of camp equipment, and their distinctive component parts.
- (9) Armour plates.
- (10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
- (11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

Article 23. Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified. Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

Article 24. The following articles, susceptible of use in war as well as for purposes of peace, may, without notice,⁶⁷⁹ be treated as contraband of war, under the name of conditional contraband:

⁶⁷⁹ Note in original: See footnote relative to Article 22.

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

Article 25. Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

Article 26. If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such

intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

Article 27. Articles which are not susceptible of use in war may not be declared contraband of war.

Article 28. The following may not be declared contraband of war:

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts; copra.
- (3) Rubber, resins, gums, and lacs; hops.
- (4) Raw hides and horns, bones, and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs, and bristles.

(17) Articles of household furniture and decoration; office furniture and requisites.

Article 29. Likewise the following may not be treated as contraband of war:

(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

Article 30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

Article 31. Proof of the destination specified in Article 30 is complete in the following cases:

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

Article 32. Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

Article 33. Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

Article 34. The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband. In cases where the above presumptions do not arise, the destination is presumed to be innocent. The presumptions set up by this Article may be rebutted.

Article 35. Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port. The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to

the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

Article 36. Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

Article 37. A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

Article 38. A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

Article 39. Contraband goods are liable to condemnation.

Article 40. A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

Article 41. If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

Article 42. Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

Article 43. If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband. A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

Article 44. A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship. The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers. The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

CHAPTER III - UNNEUTRAL SERVICE

Article 45. A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:

(1) If she is on a voyage especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation. The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

Article 46. A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

(1) If she takes a direct part in the hostilities;

(2) If she is under the orders or control of an agent placed on board by the enemy Government;

(3) If she is in the exclusive employment of the enemy Government;

(4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy. In the cases covered

by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

Article 47. Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel

CHAPTER IV - DESTRUCTION OF NEUTRAL PRIZES

Article 48. A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

Article 49. As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

Article 50. Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

Article 51. A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must

compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

Article 52. If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

Article 53. If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

Article 54. The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage. The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

CHAPTER V - TRANSFER TO A NEUTRAL FLAG

Article 55. The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent

nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted. Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

Article 56. The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed. There, however, is an absolute presumption that a transfer is void

- (1) If the transfer has been made during a voyage or in a blockaded port.
- (2) If a right to repurchase or recover the vessel is reserved to the vendor.
- (3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

CHAPTER VI - ENEMY CHARACTER

Article 57. Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly. The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

Article 58. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

Article 59. In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

Article 60. Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded. If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

CHAPTER VII - CONVOY

Article 61. Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

Article 62. If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

CHAPTER VIII - RESISTANCE TO SEARCH

Article 63. Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

CHAPTER IX - COMPENSATION

Article 64. If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgement being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

[Final provisions not included as these related primarily to ratification]

Appendix 2: The Holtzendorff Memorandum – 22 December 1916⁶⁸⁰

I. The war requires a decision before autumn 1917, lest it should end in the mutual exhaustion of all parties and thus in a disaster for us. Of our enemies, Italy and France are already so severely weakened in their economic foundations that they are kept in the fight only through England's energy and resources. If we succeed to break England's backbone, the war will immediately be decided in our favour. England's backbone is the merchant tonnage, which delivers essential imports for their survival and for the military industry of the British islands and which ensures the (kingdom's) ability to pay for its imports from abroad.

II. The current situation in respect to the merchant tonnage has already been mentioned in the memorandum of 27 August and is laid out in further detail in the attachment. In all brevity the situation is as follows: The (shipping) rates have reached outrageous levels, often as much as ten times as much (as in peacetime) for many important goods. We know with certainty from a variety of sources that merchant tonnage is lacking everywhere.

The current English merchant tonnage can safely be assumed to be in the order of 20 million gross register tons. 8.6 million tons of these are requisitioned for military purposes, and ½ million is employed in coastal trade. Approximately 1 million (tons) are undergoing repairs or are otherwise temporarily unavailable. Approximately 2 million tons are sailing for other allies, which leaves about 8 million tons of English merchant tonnage to provide for the supply of England. An analysis of statistical figures of ship movements in British ports suggests an even lower figure. In the months of July - September 1916 only 6 ¾ million tons were employed in the trade with England. In addition to that, other tonnage sailing in the trade with England can be assumed to amount to around 900,000

⁶⁸⁰ von Holtzendorff, *The Holtzendorff Memorandum*, accessed 24 May 2007, The World War One Document Archive. Available: <http://www.gwpda.org/naval/holtzendorffmemo.htm>.

tons of enemy - non-English - and approximately 3 million tons of neutral tonnage. Hence, no more than 10 $\frac{3}{4}$ million GRT are at the disposal for the supply of England.

III. If the achievements in our battle against merchant tonnage have been encouraging thus far, then the exceptionally poor world harvest of grain, including feed grain, this year provides us with a unique opportunity, which nobody could responsibly reject. Both North America and Canada will probably cease their grain exports to England in February. Then that country will have to draw its grain supplies from the more distant Argentina, but since Argentina will only be able to deliver very limited quantities, because of the poor harvest, England will have to turn to India and mostly Australia. In the attachment it is explained in detail how such an increase in the length of the grain routes will require an extra 720,000 tons of tonnage for the grain shipments alone. In practice, the implications will be that, until August 1917, $\frac{3}{4}$ million tons of the available 10 $\frac{3}{4}$ million tons will have to be employed for a service, which had hitherto not been required.

IV. Under such favourable circumstances an energetic blow conducted with all force against English merchant tonnage will promise a certain success in a way that I have to reiterate and emphasize my statements made on 27 August 1916 that 'our clearly defined strategic objective is to force a decision in our favour through the destruction of (enemy) sea transport capacity' and also that 'from a military point of view it would be irresponsible not to make use of the submarine weapon now.' As things stand at the moment, I cannot vouch that a campaign of unrestricted submarine warfare will force England to make peace within five months time. This reservation needs to be made in respect to the unrestricted submarine warfare only. Of the currently conducted submarine warfare under cruiser rules, a decisive result cannot be expected, regardless of the circumstances, even if all armed merchantmen are designated as legitimate targets.

V. Based on a monthly rate of destruction of 600,000 tons of shipping through a campaign of unrestricted submarine warfare, as pointed out previously, and on the well grounded expectation, elaborated upon in the attachment, that at least two fifths of the neutral tonnage sailing in the trade with England will be deterred by such a campaign, it stands to reason that the current volume English sea borne trade will be reduced by 39% within five months. This would not be bearable for England, neither in view of her future position after the war, nor in view of her ability to continue the war effort. Already, the country is at the verge of a food crisis, which will soon compel it to attempt to undertake the same food rationing measures, which we, as a blockaded country, have been forced to adopt since the outbreak of the war. The preconditions for implementing such measures are totally different and infinitely more unfavourable than in our case. They do not have the necessary administration and their population is unused to submitting to such privations. Then there is another reason why the uniform rationing of bread for the whole population will not be possible in England at this point. It was possible for Germany at a time in which bread could be substituted by other foodstuffs. That moment has been missed in England. But with only three fifths of the current sea borne trade, the continued supply with (alternative) foodstuffs cannot be maintained unless a severe rationing of grain is imposed-provided the war industry is to be maintained at its current output level. The objection that England could have sufficient domestic stockpiles of grain and raw materials has been disproved in detail in the attachment.

In addition to that, the unrestricted submarine campaign would cut off England from the trade with Denmark and Holland, which would result in an immediate shortage of fats, since one third of all butter imports and the entire margarine imports to England originate in Denmark and Holland respectively. Moreover, by threatening the sea routes to Scandinavia and intensifying activities against the Spanish iron-ore trade, it would result in a scarcity of iron-ore and wood. This will automatically reduce the coal production for

lack of wood. In consequence it would also reduce the output of pig iron, steel, and subsequently the production of munitions, which depends on both. Finally, it gives us the long hoped for opportunity to strike at neutral munitions shipments, and thus it will also provide a relief for the army.

By contrast, a submarine campaign according to cruiser rules, even assuming the possibility of indiscriminate attacks on armed merchantmen, would only yield a reduction of the tonnage sailing for England by 5 x 400,000 tons-about 18%-or less than half of what could be achieved by unrestricted submarine warfare. Experience so far does not suggest that the authorization to torpedo armed merchantmen would improve upon the result of 400,000 tons of destroyed merchant tonnage, which has been achieved over the past two months. In fact, it is likely to merely compensate for a decline, which has to be expected in the course of progressing arming (of merchantmen). I am aware that even a reduction of one fifth of English sea borne trade will have a severe impact on the English supply situation. However, I consider it unthinkable that the current English leadership under Lloyd George, who is absolutely determined, could be forced to make peace on these grounds, particularly since the constraints of fat, iron-ore, and wood scarcity--and the latter's impact on the munitions production-- would not come into effect. Furthermore, the psychological effects of panic and terror cannot be exploited. These effects, which can only be achieved by a campaign of unrestricted submarine warfare are, in my view, an indispensable prerequisite for success. Just how important they are can be judged by the experiences made when we initiated submarine warfare in early 1915, or even during the brief period of the submarine campaign in March and April 1916, when the British believed that we were serious about it.

A further precondition (for success) is that the beginning and the declaration of unrestricted submarine warfare should coincide in a manner that leaves no room for

negotiations, particularly between England and the neutrals. Only then will the effect of shock have the most profound impact on the enemy and the neutrals.

VI. Upon the declaration of unrestricted submarine warfare the United States government will once more be compelled to make a decision whether or not to take the consequences of its previous position vis-à-vis the unrestricted submarine warfare. I am absolutely of the opinion that war with the United States is such a serious matter that everything has to be undertaken to avoid it. Fear of a diplomatic rupture however, should not lead us to recoil from the use of a weapon that promises victory for us.

At any rate, it is realistic to assume the worst case as the most probable one and to consider, which impact an American entry into the war on the side of our enemies would have on the course of the war. In respect to the merchant tonnage this impact is likely to be negligible. It cannot be expected that more than a fraction of the interned central power tonnage in American-and perhaps in other neutral ports-can be put into the trade with England at short notice. The overwhelming part of it can be rendered useless in a manner that it will be unable to sail during the first, critical months. All preparations in this respect have been made. Also, there would be no crews available in the initial stages. The American troops would be of equally little import, if only for the lack of bottoms to carry them over here in great numbers; the same applies to American money, which cannot compensate the lack of tonnage. The only question that remains would be how America would react to a peace, which Great Britain would be forced to accept. It is unlikely that it would decide to continue the war against us, since it has no means to strike at us decisively, whereas its sea borne commerce would suffer from our submarines. Indeed, it is to be expected that it will join England in making peace, in order to restore healthy economic conditions.

Therefore my conclusion is that a campaign of unrestricted submarine warfare, launched in time to produce a peace before the harvest of the summer 1917-i.e. 1 August-has to accept the risk of American belligerence, because we have no other option. In spite of the diplomatic rupture with America, the unrestricted submarine warfare is nevertheless the right means to conclude this war victoriously. It is also the only means to this end.

VII. Since I have declared the time come to strike against England in autumn 1916 the situation has even improved tremendously in our favour. The crop failure, in conjunction with the impact of the war on England up to now, gives us the opportunity to force a decision before the next harvest. If we do not make use of what seems to be the last chance, then I see no other option than that of mutual exhaustion, without our succeeding to bring the war to an end on terms that will guarantee our future as a world power.

In order to achieve the required results, the unrestricted submarine warfare has to commence no later than 1 February. I request from your Excellency an indication, whether the military situation on the Continent, particularly in regard to the remaining neutrals, would allow this schedule. The necessary preparations can be completed within three weeks time.

(Signed) von Holtzendorff

Appendix 3: The Zimmermann Telegram⁶⁸¹

MAILED TELEGRAM RECEIVED.
 1-8-18
 State Dept.

By *Wm. A. E. Hoff*
Oct. 27, 1917

FROM 2nd from London # 5747.

"We intend to begin on the first of February unrestricted submarine warfare. We shall endeavor in spite of this to keep the United States of America neutral. In the event of this not succeeding, we make Mexico a proposal of alliance on the following basis: make war together, make peace together, generous financial support and an understanding on our part that Mexico is to reconquer the lost territory in Texas, New Mexico, and Arizona. The settlement in detail is left to you. You will inform the President of the above most secretly as soon as the outbreak of war with the United States of America is certain and add the suggestion that he should, on his own initiative, ~~invite~~ ^{invite} Japan to immediate adherence and at the same time mediate between Japan and ourselves. Please call the President's attention to the fact that the ruthless employment of our submarines now offers the prospect of compelling England in a few months to make peace." Signed, ZIMMERMANN.

⁶⁸¹ Intelligence Intercept, HW 7/19 Room 40 Intercepts (1916-1917).